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Briefing on How To Use the Federal Register
For information on a briefing in New Orleans, LA, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St., Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-083]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 11 counties in North Carolina and 3 counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective July 1, 1991. Consideration will be given only to comments received on or before August 30, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-083. Comments may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Craven, Duplin, Greene, Pitt, and Wayne Counties in North Carolina, and areas in Berkeley County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations.

The rule portion of this document lists the suppressive areas for each county. Nonfarm areas, if any, are listed first; farms are then listed alphabetically.

Removal of Areas From List of Regulated Areas

We are also amending the list of suppressive areas by removing areas in Columbus, Craven, Cumberland, Duplin, Harnett, Lenoir, Pender, Sampson, and Wayne Counties in North Carolina, and areas in Florence and Horry Counties in South Carolina from § 301.80-2a of the regulations. As a result of this action, there are no longer any regulated areas in Harnett and Lenoir Counties, North Carolina or in Florence County, South Carolina.

We are taking this cation because we have determined that witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are removing these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an estimated annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will

not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 3,449 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 709 of these entities, by removing 699 entities from regulation and placing 10 new entities under regulation. We have determined that the 699 deregulated entities will realize combined annual savings of approximately $46,800.00 or an average of $67 each, in regulatory and control costs. We estimate that the 10 newly regulated entities will need to invest approximately $20 each, per year, in order to comply with our regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; generally infested and suppresive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. Highway 76, then west along U.S. Highway 76 to its junction with State Secondary Road 1356, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Roads 1726 and 1713.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of its junction with State Secondary Road 1447.

The Nelson, Joseph, Estate located on the northeast side of State Secondary Road 1450 and 1.2 miles northeast of its junction with State Secondary Road 1454.

The Tripp, Dudley, farm located on the north side of the State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along these city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to its junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Contrell, C.T., farm located on the west side of State Secondary Road 1400 as its junction with State Secondary Road 1401.

The Elliott, W.H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Melvin, Edith, farm located on the east side of State Secondary Road 1600 and 1.7 miles north of its intersection with State Secondary Road 1615.

The Pruitt, K.D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Vann, W.E., farm located on the northeast side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

Duplin County. The Grand, Pietro, farm located 0.2 mile southeast of end of State Secondary Road 1981.

The Hamilton, John, farm located on both sides of State Secondary Road 1921 and 1.4 miles southeast of the junction of this road and State Secondary Road 1922.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Lewis, Merle S., farm located on both sides of State Secondary Road 1508 and .25 miles east of its intersection with State Secondary Road 1004.

The Mathis, Sudie, farm located on the southwest side of State Secondary Road 1128 and 0.1 mile south of the Duplin-Sampson County line.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 east of its junction with State Highway 11.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of U.S. Highway 24 and the east side of State Secondary Road 1737 at the intersection of this road.

Greene County. The Applewhite, Claudia, farm located on the west side of State Secondary Road 1419 and .2 mile south of its junction with North Carolina Highway 903.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Dixon, Sudie, farm located on the west side of State Secondary Road 1004 and 0.2 mile south of its junction with State Secondary Road 1405.

The Dun, Jo, Estate farm located 1.0 mile south of Maury on the northeast side of State Secondary Road 1441 and .5 mile west of its junction with State Secondary Road 1413.

The Dunn, Theodore, S., farm located on the east side of State Secondary Road 1413 and in the northeast junction with this road and State Secondary Road 1417.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Nethercutt, Lawrence, farm located on the north side of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Strong, Eriver, farm located on the east side of State Secondary Road 1419 and 1.1 miles north of its junction with State Secondary Road 1418.

The Warren, Francis, farm located on the west side of State Secondary Road 1418 and 0.3 mile north of its junction with State Secondary Road 1419.

The Whitaker, J.H., farm located on the east side of State Secondary Road 1004 at its junction with State Secondary Road 1405 and 0.6 mile south of its junction with North Carolina Highway 102.

The Williams, Minnie, farm located on the north side of State Secondary Road 1417 and 0.8 mile east of its junction with State Secondary Road 1413.

Pender County. The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Barnhill, Frank, farm located on the south side of State Highway 210 and 0.1 mile of the junction of this highway and State Secondary Road 1130.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Corbett Farming Co. farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Dees, Betty, farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Flynn, B.S., farm located on the north side of State Secondary Road 1108 at its junction with State Secondary Road 1107.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Henry, Mary E., farm located 0.1 mile south of State Secondary Road 1130 and 0.2 mile east of its intersection with the Pender-Bladen County line.

The Hicks, Carol, farm located on the south side of State Highway 210 and 0.6 mile east of its intersection with U.S. Highway 117.

The Kea, Nora, farm located 0.1 mile west of the west end of State Secondary Road 1108.

The Keith, F.R., farm located on both sides of State Secondary Road 1130 and 0.7 mile west of the junction of this road and State Highway 210.

The Keith, James R., farm located on a field road 0.8 mile northeast of State Secondary Road 1104 and 1.0 mile northwest of its junction with State Secondary Road 1107.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Larkins, C.E., farm located on the southwest side of State Secondary Road 1102 and 0.2 mile southeast with the Pender-Bladen County line.

The Larkins, Maggie, estate located on the northeast side of State Secondary Road 1102 and 0.2 mile southeast along this road to its intersection with the Pender-Bladen County line.

The Malloy, Pete, No. 1 farm located on both sides of State Highway 210 and the east side of State Secondary Road 1599.

The Malloy, Pete, No. 2 farm located on both sides of State Highway 210 and 1.3 miles east of the intersection of this highway and U.S. Highway 117.

The Manuel, George, farm located 0.1 mile south of State Highway 210 and 0.2 mile west of its junction with State Secondary Road 1103.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Nixon, Rosa, farm located on both sides of State Highway 210 and on the west side of State Secondary Road 1599.

The Taylor, Bill, farm located on the west side of State Secondary Road 1104 and 2.0 miles south of the northernmost intersection of this road with State Secondary Road 1103.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Williams, Leroy, farm located on the south side of State Secondary Road 1600 and at the south end of State Secondary Road 1599.

Pitt County. The Cannon, Bruce, farm located on the west side of State Secondary Road 1918 and 0.3 mile north of its junction with State Secondary Road 1917.

The Couch, Ruth, farm located on the east side of State Secondary Road 1918 and 0.3 mile north of its junction with State Secondary Road 1917.

The Hodges, M.B., farm located 1.1 miles north of Grifton on the east side of State Secondary Road 1907 and 1.1 miles north of its junction with North Carolina Highway 118.

The Nobles, Barbara, farm located on the west side of State Secondary Road 1918 and 0.1 mile south of its junction with State Secondary Road 1919.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its

junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1004, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary Road 1927, then southerly along this road to the point of beginning.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Weeks, Glenn, farm located on the south side of State Secondary Road 1737 and 1.1 mile east of U.S. Highway 701.

Wayne County. The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Georgia-Pacific Corp. farm located on the north side of State Secondary Road 2010 at the junction of this road and State Secondary Road 1938.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of the junction of this road and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 mile east of the junction of this road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of the junction of this road and State Secondary Road 1913.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The McClenny, George A., No. 1, farm located on the south side of State Secondary Road 1007 and 0.1 mile west of its junction with North Carolina Highway 581.

The Sasser, Rosa, farm located on both sides of North Carolina Highway 111 and 0.1 mile south of its junction with State Secondary Road 1912.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Berkeley County. The Magnigault, Clarence, farm located on the northwest corner of the junction of State Secondary Road 907 with U.S. Highway 52, said junction being 1.8 miles north of the junction of U.S. Highway 52 and U.S. Highway 17A, said junction being 1.0 mile northwest of the intersection of U.S. Highways 52 and 17A with the Tail Race Canal.

Dillon County. The entire county.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 19, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway 391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then southwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of rural paved road No. 109 with rural paved road No. 79.

The Cox, Nancy T., farm located on the northwest corner of the intersection of two dirt roads. This intersection being 0.8 mile northeast of the junction of State Secondary Road 105 and State Secondary Road 377. One of the dirt roads is an extension of State Secondary Road 105.

The Cox, Velma, farm located on the west side of a dirt road and 1.0 mile northwest of junction of this dirt road and State Primary Highway 90. This junction being 3.2 miles south of junction of State Primary Highway 90 and State Secondary Road 31.

The Harden, John, farm is located on the northwest side of a dirt road and 0.4 mile northeast of junction of this dirt road with the junction of State Secondary Roads 105 and 377.

The Holmes, Marie T., farm located on the west side of a dirt road and 0.7 mile northwest of this dirt road with its junction with State Primary Highway 90. This junction being 3.2 miles south of junction of State Primary Highway 90 and State Secondary Road 31.

The Livingston, W. S., farm located on the south side of a dirt road and 0.6 mile east of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this junction being 0.8 mile south of junction of State Primary Highway 90 and State Secondary Road 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Vaugh, Ruth, farm located on the east side of a dirt road and 0.7 mile northwest of this dirt road and its junction with State Primary Highway 90. This junction being 3.2 miles south of junction of State Primary Highway 90 and State Secondary Road 31.

Marion County. The entire county.

Done in Washington, DC, this 26th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91 15592 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule partially revises the method of computing entrance fees that must be paid by insured depository institutions participating in conversion transactions (transfers between the deposit insurance funds). More specifically, this final rule deletes the current requirement that the reserve ratio used when calculating entrance fees be computed once a year, based upon audited, year-end financial statements of the FDIC. Instead, under this final rule, the reserve ratio to be used when calculating entrance fees will be recomputed by the FDIC on a quarterly basis, and will be derived from unaudited data. The reserve ratio to be used when calculating entrance fees for a particular conversion transaction will be the most recent reserve ratio calculated quarterly by the FDIC prior to the date on which the conversion transaction takes place (*i.e.*, when deposit liabilities are transferred between insurance funds).

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Jean Best, Counsel, Legal Division, (202) 898-3812; (for information on billing) Carole Edwards, Fiscal Officer, Division of Accounting and Corporate Services, (703) 516-5557; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this final rule. Consequently, no information has been submitted to the Office of Manangement and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the final rule would not have a significant impact on a substantial number of small entities.

Discussion

A. Interim Rules

On October 2, 1989, the FDIC published in the **Federal Register** (54 FR 40377) an interim rule and request for comments prescribing the entrance fee that must be paid by insured depository institutions that participate in conversion transactions resulting in the transfer of insured deposits from the Savings Association Insurance Fund ("SAIF") to the Bank Insurance Fund ("BIF"). The interim rule set the entrance fee for SAIF-to-BIF conversion transactions as the product of the "reserve ratio" of the fund being entered (*i.e.*, BIF) multiplied by the deposit base being transferred from SAIF to BIF insurance. The reserve ratio was described as the most recent BIF reserve ratio calculated on the basis of the audited financial statements of the FDIC and made publicly available prior to the date on which deposit liabilities are transferred from a SAIF member to a BIF member. The FDIC noted that the FDIC prepares statements of financial condition as of December 31 of each year, and that these financial statements are audited by the United States General Accounting Office. The BIF reserve ratio is derived, in part, from these audited financial statements.

On December 26, 1989, the FDIC published in the **Federal Register** (54 FR 52923) an interim rule and request for comments prescribing the entrance and exit fees that must be paid by insured depository institutions that participate in conversion transactions resulting in the transfer of insured deposits from BIF to SAIF. In most respects, this interim rule paralleled the interim rule published on October 2, 1989. It set the BIF-to-SAIF entrance fee as the product of the "reserve ratio" of the fund being entered (*i.e.*, SAIF), or one basis point (0.0001), whichever is greater, multiplied by the deposit base being transferred from BIF to SAIF insurance. Consistent with the interim rule published on October 2, 1989, the interim rule published on December 26, 1989, provided that the reserve ratio to be used in computing the entrance fee shall be the most recent SAIF reserve ratio calculated on the basis of the audited financial statements of the FDIC and made publicly available prior to the date on which deposit liabilities are transferred from a BIF member to a SAIF member.

On March 21, 1990, the FDIC published an interim rule with request for comments in the **Federal Register** (55 FR 10406). That interim rule revised the entrance fee assessed in conversion transactions. In part, it was determined that the reserve ratio applicable should be based upon the ratio of the net worth of the insurance fund being entered to the value of the aggregate total domestic deposits held in all such insurance fund members.

Previously, in both the October 2, 1989, and the December 26, 1989, interim rules, the reserve ratio had been defined as the ratio of the net worth of the fund to the value of the aggregate estimated insured deposits held in all members of that fund.

B. Summary of Comments Received

In the interim rule published on October 2, 1989, and again in the interim rule published on December 26, 1989, the FDIC noted that by basing the reserve ratio on the FDIC's most recent, audited year-end financial statements, the reserve ratio would be computed only once a year. The FDIC asked interested persons to comment on whether it was appropriate to compute the reserve ratio once a year, or if it would be more appropriate to compute the reserve ratio more frequently based on unaudited data. The question posed by the FDIC was as follows.

> 4. The entrance fee is to be based on the most recent publicly available reserve-to-insured-deposit ratio computed by the FDIC on the basis of its most recent audited year-end financial statements. Thus, for purposes of the interim rule, the reserve ratio will be recomputed only once a year. Should the reserve ratio be computed more frequently for this purpose based on unaudited data or, given the potential fluctuations in the reserve ratio over time, would an annual average reserve ratio be more appropriate?

The FDIC received five comment letters specifically addressing this issue. One bank holding company commented that a quarterly calculation would be more appropriate. A banking trade group urged that the reserve ratio be computed once a year. They reasoned that a bank planning to buy a failing thrift would have to constantly change its calculations of its entrance fee if the FDIC constantly changed its estimate of the reserve ratio. They wrote: "Adopting one reserve ratio each year would reduce bankers' compliance burden." Another banking trade group commented that computation on a yearly basis as described in the interim rules was satisfactory. Their position was based on the belief that computation on a more frequent basis would not necessarily result in a significant change in the actual entrance fee as compared to a yearly calculation. They noted: "Also, bidders need stable figures over a fairly lengthy period of time because the process to determine

whether or not to bid can be rather lengthy." A savings association trade group suggested that the reserve ratio be based on a moving average over a three-year period. They argued that using such an average "would smooth cyclical variations associated with business cycle changes." The fifth comment letter was submitted by a banking trade group and reiterated the trade group's earlier position that "[a]dopting one reserve ratio each year would reduce the compliance burden" on banks planning to buy a failing thrift.

Although three of the five comments received on this specific issue urge the FDIC to calculate the reserve ratio on a once-a-year basis, the FDIC has determined that the reserve ratio to be used when calculating entrance fees should be recomputed on a quarterly basis. In addition, the FDIC has determined that the reserve ratio may be derived from unaudited financial data. The reasons for the FDIC's decision are discussed in more detail below.

C. Revisions to Entrance Fee Assessed in Conversion Transactions

The transfer of deposits from SAIF to BIF necessarily increases potential BIF liabilities without a commensurate increase in insurance reserves (*i.e.*, "dilutes" the entered insurance fund). Likewise, the transfer of deposits from BIF to SAIF increases potential SAIF liabilities without a commensurate increase in insurance reserves. As directed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is to determine the amount by which reserves of the insurance fund being entered need to increase to prevent dilution of the insurance fund in conversion transactions. If, for example, the ratio of insurance reserves to total deposits is .60 percent, dilution would be prevented by charging a fee equal to .60 percent of transferred deposits. As announced in the interim rules previously referred to, the FDIC determined that dilution could be measured by multiplying the appropriate "deposit base" by the reserve ratio. None of the comments received challenged this basic fee structure. That is, none of the commentators wrote that it was inappropriate to use the reserve ratio as a method of measuring dilution to the insurance fund being entered. Consequently, the FDIC is affirmed in its belief that "dilution" of the insurance fund being entered may appropriately be prevented by exacting a fee equal to the "deposit base" transferred multiplied by the reserve ratio of the fund being entered. Having determined that the statutory mandate to prevent dilution of the insurance fund being entered may be satisfied by means of calculating the entrance fee on the basis of the applicable reserve ratio, the FDIC further believes that it is equally appropriate to employ a reliable, but current, reserve ratio. In other words, using stale data will produce skewed results even though the underlying equation is consistent with the mandate of FIRREA.

Based upon the FDIC's experience with the assessment fees to date, the FDIC has found that the year-end audit of its financial statements is occasionally delayed. For example, the audit of the FDIC's December 31, 1990, statements of financial condition has not yet been finalized. As a result, institutions participating in conversion transactions consummated after December 31, 1990, are required, under the current interim rules, to calculate entrance fees based on the FDIC's 1989 audit. The consequence of this delay is that, at least in today's climate, institutions participating in conversion transactions are paying fees that may be higher than necessary to prevent dilution of the insurance fund entered. While the FDIC recognizes its obligation to comply with the mandate of FIRREA, the FDIC also believes it is inappropriate to assess fees even slightly higher than the minimum required by law. Assessing fees higher than the minimum required by law may have serious ramifications: The majority of commentators contend that the fees are too high and could therefore preclude the consummation of otherwise permitted conversion transactions. The following comments, which raise this concern, are typical of the letters received by the FDIC.

One SAIF-insured institution wrote that it was selling two of its branches to a BIF member savings bank. The sale was apparently arranged, in part, to increase the SAIF member's net worth. The SAIF member wrote that the fees substantially reduced the institution's profit from the sale, and noted: "[W]e find it very difficult to understand the decision making process that paralyzes a transaction that builds net worth." A bank contemplating the purchase of a "quasi-healthy thrift" branch wrote: "The fees to be paid by the acquirer will tend to reduce the premium offer and lessen the potential capital improvement for the selling thrift." A law firm representing a SAIF member wrote that its client did not meet the core capital requirements applicable to SAIF members. They noted that one method of raising capital to meet its capital requirements would be through the sale of some of its branches. "Such a sale would provide the twin benefits of enabling the Institution to reduce its total assets and increase its retained earnings, and therefore capital, by the amount of the premium paid for the core deposits in the transferred branches." They noted, however, that the institution's branches are located in areas in which there are few SAIF insured institutions able to purchase branches; almost all of the potential purchasers are BIF members. "As a result, the ability of the Institution to sell any of its branches at a reasonable premium would be severely impeded, if not precluded, by the imposition of the entrance fee payable to BIF . . . plus the imposition of the exit fee payable to SAIF in connection with such deposit transfers."

Among other suggestions, the commentator urged:

> In establishing an entrance fee in connection with nonsupervisory branch sales by SAIF members that accurately carries out the Congressional requirement not to cause dilution to the BIF, the FDIC must take into account that the use of an unrealistically broad deposit base and an unrealistically high Reserve Ratio will impede unfairly the ability of a substantial number of undercapitilized SAIF members to achieve mandated capital levels—a goal that is in the best interests of both these institutions and of the FDIC itsself, as the insurer of these institutions.

On balance, the FDIC believes that the reserve ratios used when calculating entrance fees should be current: they should be recomputed more often than once a year and, once recomputed, they should be made readily available. The goal of providing current reserve ratios cannot always be achieved under the present interim rules, however. Based on the FDIC's experience with the interim rules to date, the FDIC now recognizes that audits of the FDIC's year-end financial statements will occasionally be delayed, thereby preventing the recomputation of the BIF and SAIF reserve ratios on a timely basis. A solution is readily available, however. The BIF and SAIF reserve ratios are accurately reflected in interim and year-end financial reports prepared by FDIC staff. The FDIC concludes that it would be appropriate to calculate entrance fees using BIF and SAIF reserve ratios derived from such financial reports. Even though the reports are not audited, they are current. Consequently, entrance fees computed on the basis of reserve ratios derived from financial reports prepared by FDIC staff will be more equitable.

As noted previously, the FDIC has determined to recompute the applicable reserve ratios on a quarterly basis. With regard to the concern expressed by some commentators that potential bidders need stable figures, it is believed that recomputing the reserve ratios on a quarterly basis will not be so often as to be disruptive to the acquisition process. The FDIC anticipates that it will recompute the reserve ratios to be used for purposes of calculating entrance fees at the end of each calendar quarter (on or about March 31, June 30, September 30, and December 31). These dates have been selected in order to allow the FDIC to use data derived from consolidated Reports of Condition and Income ("call reports"). The reserve ratios used for purposes of calculating entrance fees are, in part, based upon the value of the aggregate total domestic deposits held in all members of that insurance fund. In turn, such total deposits are derived from "edited" or verified call reports. Depository institutions are normally required to file call reports as of the close of business on the last calendar day of each calendar quarter (the "report date"). Call reports must be received no more than 30 calendar days after the report date (*i.e.*, April 30, July 30, October 31, January 31; the "submission date"). Call reports are edited within 40 to 50 days from the submission date. For example, call reports with a report date of March 31 must be submitted by April 30 of each year, and are edited over the following 40 to 50 days. The value of the aggregate total domestic deposits is finally determined only after this verification process has been completed. Consequently, reserve ratios as of March 31 could normally be recomputed by June 30. It should also be noted that, when calculating reserve ratios, the FDIC intends to derive the net worth of the insurance fund being entered and the value of the aggregate total domestic deposits held in all members of that insurance fund, from the same reference point or time period. For example, as explained above, the reserve ratio announced June 30 will be based upon data derived from call reports with a report date of March 31. Consistent therewith, the net worth of the insurance fund being entered will likewise be determined as of March 31. Fees assessed on the basis of unaudited financial reports will not be adjusted on the basis of later, audited financial statements.

The reserve ratio to be used when calculating entrance fees for a particular conversion transaction will be the most recent reserve ratio calculated (on a quarterly basis) by the FDIC prior to the date on which the conversion transaction takes place (*i.e.*, when deposit liabilities are transferred between insurance funds). The interim rules published on October 2, 1989, and on December 26, 1989, provided that the applicable reserve ratio for any particular conversion transaction would be the reserve ratio made "publicly available" prior to the date on which deposit liabilities are transferred from one deposit insurance fund to another. The FDIC is removing the phrase "publicly available" through this final rule. The FDIC believes that this reference is no longer necessary because the final rule provides specific dates on or about which the reserve ratios will be recomputed by the FDIC (*i.e.*, at the end of each calendar quarter). Because this final rule sets out the dates on or about which the reserve ratios will be recomputed, participants to conversion transactions are already put on notice as to when they need to contact the FDIC for the current reserve ratios and the time period over which the reserve ratios will be applicable. At bid meetings where failed thrifts or banks are being disposed of by the Resolution Trust Corporation ("RTC") or the FDIC, the current reserve ratio for the quarter is normally announced by the FDIC. Individuals acquiring deposits from "healthy" thrifts or banks as part of a conversion transaction may contact the FDIC for current reserve ratios. The reserve ratios will take effect as they are recomputed pursuant to this final rule, whether or not they are announced by the FDIC through a public medium of general circulation. It should also be noted that the applicable reserve ratio is that in effect at the time the conversion transaction takes place. In other words, if a bid meeting is conducted by the RTC or FDIC during the first quarter of the calendar year, but the conversion transaction takes place during the second quarter of the calendar year, the applicable reserve ratio is that which is announced at the end of the first quarter (*i.e.*, March 30).

Through this document, the FDIC is announcing the reserve ratio to be used when calculating entrance fees for any SAIF-to-BIF conversion transaction occurring on or after the date of publication of this final rule in the **Federal Register**, until such time as the BIF reserve ratio is recomputed in accordance with this final rule. The ratio of the net worth of the BIF to the value of the aggregate total domestic deposits held in all BIF members as of March 31, 1991, is 28 basis points (0.0028). With regard to BIF-to-SAIF conversion transactions, the applicable reserve ratio to be used for purposes of calculating entrance fees continues to be one basis point (0.0001).

For the reasons outlined above, the FDIC has determined to revise the entrance fees that must be paid by participants to conversion transactions. Under this final rule, the reserve ratio to be used when calculating entrance fees will be recomputed by the FDIC on a quarterly basis, and will be derived from unaudited data. The reserve ratio to be used when calculating entrance fees for a particular conversion transaction will be the most recent reserve ratio calculated quarterly by the FDIC prior to the date on which the conversion transaction takes place.

List of Subjects in 12 CFR Part 312

Bank deposit insurance, Savings associations.

For the reasons set out in the preamble, title 12, chapter III, subchapter A of the Code of Federal Regulations, is amended as set forth below.

PART 312—ASSESSMENT OF FEES UPON ENTRANCE TO OR EXIT FROM THE BANK INSURANCE FUND OR THE SAVINGS ASSOCIATION INSURANCE FUND

1. The authority citation for part 312 is revised to read as follows:

Authority: 12 U.S.C. 1815(d); 12 U.S.C. 1819.

2. Sections 312.2 and 312.3 are revised to read as follows:

§ 312.2 Bank Insurance Fund reserve ratio.

The Bank Insurance Fund reserve ratio to be used in computing the entrance fee under this part with respect to any particular conversion transaction shall be the most recent Bank Insurance Fund reserve ratio calculated quarterly by the Federal Deposit Insurance Corporation prior to the date on which deposit liabilities are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member in connection with that conversion transaction.

§ 312.3 Savings Association Insurance Fund reserve ratio.

The Savings Association Insurance Fund reserve ratio to be used in computing the entrance fee under this part with respect to any particular conversion transaction shall be the most recent Savings Association Insurance Fund reserve ratio calculated quarterly by the Federal Deposit Insurance

Corporation prior to the date on which deposit liabilities are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member in connection with that conversion transaction.

By order of the Board of Directors.

Dated at Washington, DC, this 25th day of June, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-15544 Filed 6-28-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

15 CFR Parts 8a, 29a, and 29b

[Docket No. 910222-1131]

RIN 0605-AA07

Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

AGENCY: Department of Commerce.

ACTION: Affirmation of interim final rule.

SUMMARY: This rule adopts as final, Department of Commerce interim regulations at 15 CFR part 29b, "Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations." This final rule redesignates part 8a as part 29a, reserves part 8a for future use, and adds part 29b which establishes uniform audit requirements applicable to institutions of higher education and other nonprofit organizations and defines the Department's responsibilities for implementing and monitoring these requirements.

EFFECTIVE DATES: The provisions of this final rule became effective April 19, 1991, and apply to audits of nonprofit institutions for fiscal years that begin on or after May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Lambis, Director, Office of Federal Assistance, U.S. Department of Commerce, HCHB room 6054, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-5817.

SUPPLEMENTARY INFORMATION: On April 19, 1991, the Department of Commerce published an interim final rule at part 29b (56 FR 15992), and allowed interested persons 30 days to comment. No comments were received. The Department of Commerce is adopting as a final rule 15 CFR part 29b, "Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations."

This is not a major rule within the meaning of section 1 of Executive Order 12291. It will not 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 on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this rule relates to public property, loans, grants, benefits and contracts, it is exempt from the requirements of notice and opportunity to comment and the 30-day delayed effective date (5 U.S.C. 553(a)(2)). No other law requires that notice and opportunity for comment on this final rule be given.

Since notice and opportunity to comment are not required to be given for this final rule under section 553 of the Administrative Procedure Act or any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This final rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by OMB under control number 0991-0003. The public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

List of Subjects in 15 CFR Parts 29a and 29b

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Under authority of 5 U.S.C. 301, the interim final rule published at 56 FR 15992, April 19, 1991, redesignating part 8a as part 29a, reserving part 8a for future use, and adding part 29b to title 15, subtitle A of the Code of Federal Regulations is adopted as final without changes.

Sonya G. Stewart,

Director for Federal Assistance and Management Support.

[FR Doc. 91-15554 Filed 6-28-91; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Medicated Feed Applications; Salinomycin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning medicated feed applications for use of salinomycin in a Type A medicated article. The assay limits for salinomycin in a Type A medicated article currently read 100 through 120 percent. Those limits are amended to read 95 through 115 percent. This action conforms the regulations with the assay limits approved in the new animal drug application (NADA 128-666).

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: John Markus, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8623.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 7, 1986 (51 FR 594 at 595), FDA published a document which, among other things, amended the assay limits for salinomycin premix in broiler feeds to 95 through 115 percent. On March 3, 1986 (41 FR 7382 at 7393), FDA issued a final rule which revised the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. The assay limits published in the March 1986 final rule, in 21 CFR 558.4(d), were inadvertently published as 110 through 120 percent. This document amends the regulations in § 558.4(d), in the table "Category I," for the entry "Salinomycin" under the heading "Assay limits percent[1] type A" by removing "100-120" and inserting in its place "95-115".

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d), in the table for "Category I," for the entry "Salinomycin" under the heading "Assay limits percent[1] type A" by removing "100–120" and inserting in its place "95–115".

Dated: June 21, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91–15511 Filed 6–28–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–91–20]

Special Local Regulations for Marine Events; Fireworks Display; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements 33 CFR 100.511 for the Annapolis Fourth of July Fireworks Display. The regulations in 33 CFR 100.511 are needed to control marine traffic within the debris fallout area. The regulations restrict general navigation in this area for the safety of life and property.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 8 p.m. to 10:30 p.m. on July 4, 1991. If inclement weather causes postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Annapolis Recreation and Parks Department, Annapolis, Maryland, submitted an application on April 4, 1991 to hold a fireworks display on July 4, 1991. The fireworks will be launched from barges anchored approximately 150 yards off Farragut Field, U.S. Naval Academy. The debris from the fireworks display will cover an area of approximately 350 feet from the launch site. The regulations in 33 CFR 100.511 are needed to control marine traffic within the regulated area and particularly within the debris fallout area for the safety of life and property. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.511 are being implemented for this event. A portion of the regulated area will be closed during the fireworks display. Since the marked channels will not be closed for this event, marine traffic should not be severely disrupted.

Dated: June 17, 1991.

W.T. Leland,

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

[FR Doc. 91–15566 Filed 6–28–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[OGD 05-91-18]

Special Local Regulations for Marine Events; 4th of July Celebration/ Festival of Nations Fireworks Display; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.501 for the 4th of July Celebration/Festival of Nations Fireworks Display at Town Point Park, Norfolk, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 8 p.m. to 10:30 p.m., July 4, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application hold the 4th of July Celebration/Festival of Nations Fireworks Display at Town Point Park, Norfolk, Virginia. The fireworks display will be launched from a barge within the regulated area, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorage in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: June 17, 1991.

W.T. Leland,

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

[FR Doc. 91-15565 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-19]

Special Local Regulations for Marine Events; Fourth of July Fireworks Display; Parker Island, Little Egg Harbor, Beach Haven, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements 33 CFR 100.514 for the Fourth of July fireworks display launched from Parker Island, Little Egg Harbor, Beach Haven, New Jersey. The regulations in 33 CFR 100.514 are needed to control vessel traffic within the immediate vicinity of this event. The regulations restrict vessel traffic in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.514 are effective from 8:30 p.m. to 11:30 p.m., July 4, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11:30 p.m., July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Red, White and Blue Committee, Ltd., Beach Haven, New Jersey submitted an application on April 2, 1991 to hold a fireworks display launched from Parker Island, Little Egg Harbor, Beach Haven, New Jersey. The regulations in 33 CFR 100.514 are needed to control marine traffic on the waters of Little Egg Harbor. In order to protect life and property, Parker Island will be closed. A circle around the island's center with a radius of 1000 feet will be closed to waterborne traffic during the event. Vessels transiting the area will not be inconvenienced since the deep water channel will remain open.

Dated: June 10, 1991.

P.A. Welling,

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

[FR Doc. 91-15567 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-21]

Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 20, 1991. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11 a.m. to 2 p.m., on July 20, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Ports Events, Inc., of Portsmouth, Virginia, submitted an application on April 25, 1991 to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 20, 1991, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: June 17, 1991.

W.T. Leland,

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

[FR Doc. 91-15569 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 91-069]

Connecticut River Raft Race Regulations, Effective Dates for 1991

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.102.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.102, for the Connecticut River Raft Race to be held on Saturday, July 27, 1991 from 10 a.m. to 2 p.m. The regulations in 33 CFR 100.102 are necessary in order to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: The regulations, 33 CFR 100.102 are effective from 10 a.m. to 2 p.m. on Saturday, July 27, 1991 and will be in effect each year thereafter during the same time period on the first Saturday in August unless otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, U.S. Coast Guard, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published to amend the permanent regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following the normal rulemaking procedures would have been impractical. This amendment represents the sole change to the permanent special regulations as established in 33 CFR 100.102, and is expected to have no commercial impact.

Dated: June 11, 1991.

R.I. Rybacki,

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

[FR Doc. 91-15570 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 91-020]

Jenkinsons Offshore Classic, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.109.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.109, for Jenkinsons Offshore Classic (formerly known as the Ray Catena Mercedes-Benz Offshore Grand Prix). This regulation will be in effect on July 20, 1991 from 11 am to 5 pm. The regulations in 33 CFR 100.109 are necessary in order to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATE: The regulations, 33 CFR 100.109 are effective at 11 am on Saturday, July 20, 1991 and terminate at 5 pm on Saturday, July 20, 1991 and will be in effect each year thereafter during the same time period on the third Saturday of July or as published in a Federal Register notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, (617) 223-8310.

Drafting Information

The drafters of this notice are Lt. (jg.) E.G. Westerberg, project officer, First Coast Guard District Boating Safety Division, and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective time period for the permanent regulation governing the 1991 running of Jenkinsons Offshore Classic (formerly known as the Ray Catena Mercedes-Benz Offshore Grand Prix). The name change of this event represents the sole change to existing regulations. The regulations, 33 CFR 100.109, will be in effect from 11 am on July 20, 1991 through 5 pm on July 20, 1991. Jenkinsons Offshore Classic is a high speed Indy 500 type power boat race around a rectangular course. The race course is situated on the coastal water of the Atlantic Ocean extending from Manasquan, NJ to Seaside Heights, NJ. Sponsor provided patrol craft will mark the spectator area which will be established from Manasquan Inlet northward for one half (½) mile. Vessels exiting Manasquan Inlet and wishing to transit the area will be directed to proceed north along the shore until clean of (north of) the regulated area. No vessels will be allowed to exit Manasquan Inlet in a southerly direction during the effective period of regulation. The regulated area will be patrolled by the U.S. Coast Guard, the Coast Guard Auxiliary, state and local law enforcement agencies and the sponsor. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: June 11, 1991.

R.I. Rybacki,

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

[FR Doc. 91-5571 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is not necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 Federal Register, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for

loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812(f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a)(1), (2), and (3), and 36.4311(a), (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: June 14, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation of §§ 36.4201 through 36.4287 continues to read as follows;

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1812).

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "February 5, 1991", wherever it appears, and add, in its place, the date "June 17, 1991".

3. In § 36.4212, paragraph (a)(1), remove the number "11½", wherever it appears, and add, in its place, the number "12"; in paragraphs (a)(2) and (a)(3), remove the number "11", wherever it appears, and add, in its place, the number "11½".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "February 5, 1991", wherever it appears, and add, in its place, the date "June 17, 1991".

6. In § 36.4311, paragraph (a), remove the number "9", wherever it appears, and add, in its place, the number "9½"; in paragraph (b), remove the number "9¼", wherever it appears, and add, in its place, the number "9¾"; in paragraph (c), remove the number "10½", wherever it appears, and add, in its place, the number "11".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "9" and "10½", wherever they appear, and add in their place, the numbers "9½" and "11", respectively.

[FR Doc. 91–15549 Filed 6–28–91; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3706/R1125; FRL–3932–3]

RIN 2070–AB78

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and Its Metabolites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the tolerances of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid, in or on the raw agricultural commodities grass forage, hay and seed screenings and kidney and liver of cattle, goats, hogs, horses and sheep until June 21, 1993. This extension will allow EPA adequate time to receive and evaluate studies conducted by the Ciba-Geigy Corporation to assess the data required to support permanent tolerances for this chemical in or on these commodities.

EFFECTIVE DATE: Effective on June 21, 1991.

ADDRESSES: Written objections, identified by the document control number [PP 9F3706/R1125], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 22, 1989 (54 FR 7597), which announced that the Ciba-Geigy Corporation, P.O. Box 18033, Greensboro, NC 27419, had submitted a pesticide peition (9F3706) to EPA proposing that 40 CFR 180.434 be amended by establishing tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the fungicide 1-[[2(2,4-dichlorophenyl]-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the commodities grass hay at 5.0 parts per

million (ppm) and grass forage at 0.5 ppm. EPA issued a notice, published in the **Federal Register** of April 19, 1989 (54 FR 15802), which announced that the petition was subsequently amended by Ciba-Geigy Corp. by retaining the previously proposed tolerances for grass hay and grass forage while proposing to increase the established tolerance level for kidney and liver of cattle, goats, hogs, horses, and sheep to 2.0 ppm. EPA issued a notice, published in the **Federal Reigster** of March 15, 1989 (54 FR 10715), which announced that Ciba-Geigy amended the petition by proposing a tolerance for residues of the fungicide for the commodity grass screenings at 10.0 ppm.

In the **Federal Register** of June 21, 1989 (54 FR 26044), EPA established tolerances, on an interim basis, in 40 CFR 180.434 for residues of this chemical in or on the raw agricultural commodities grass forage, hay and seed screenings and liver and kidney of cattle, goats, hogs, horses, and sheep. An expiration date of June 21, 1991, was imposed for the tolerances. The interim tolerances were established based upon the condition that data be submitted to the Agency to fully support permanent tolerances for these commodities. Available data were insufficient to completely charaterize the metabolism of the compound in ruminants, and residue data were inadequate due to insufficient geographic distribution and grass species representation.

Data were submitted in response to the conditions of the interim tolerances within the required time imposed. However, review of these data indicated that the data did not reflect use of the chemical according to the label use direction, and the data were considered to be inadequate. A decision on the adequacy of the ruminant metabolism data is being withheld until adequate residue data are submitted to allow determination of appropriate tolerances in grass forage, hay and seed screenings. The reasons for the inadequacies in the submitted data were not under the control of the company. Additional residue data have been required to be submitted. Because of excessively heavy rainfall during the grass growing season, the label directions could not be followed, e.g., both the application interval and the prescribed preharvest interval were shortened.

The data submitted in the petition and other relevant material have been evaluated. The data considered include the following:

1. Plant and residue metabolism studies.

2. Residue data for crop and livestock commodities.

3. Two enforcement methodologies and a multiresidue method of analysis.

4. A rat oral lethal dose (LD_{50}) with an LD_{50} of 1,517 milligrams/kilogram (mg/kg) of body weight.

5. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 12 mg/kg/day.

6. A 90-day dog feeding study with a NOEL of 1.25 mg/kg/day.

7. A rabbit developmental toxicity study with a maternal LEL of 250 mg/kg and developmental toxicity greater than 400 mg/kg (highest dose tested).

8. A rat teratology study with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 30 mg/kg/day.

9. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (HDT) and a developmental NOEL of 25 mg/kg/day.

10. A 1-year dog feeding study with a NOEL of 1.25 mg/kg of body weight/day.

11. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 5 mg/kg/day with no carcinogenic potential under the conditions of the study up to and including aporoximately 125 mg/kg, the highest dose treated.

12. A 2-year mouse chronic feeding/carcinogenicity study with a NOEL of 15 mg/kg/day and with a satistically significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg, the highest dose tested.

13. Ames test with and without activation, negative.

14. A mouse dominant-lethal assay, negative.

15. Chinese hamster nucleus anomaly, negative.

16. Cell transformation assay, negative.

Data currently lacking are additional animal metabolism and field residue studies.

The Agency carried out a wight-of-the-evidence review of all relevant data and concluded that the fungicide is a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals in the absence of human data with a quantitation of risk (Q^*)). This conclusion was based on a determination that there was evidence of carcinogenicity in only a single species and sex. There was a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at the highest dose tested. The Agency concludes that the chemical was negative for carcinogenicity in the rat.

The Agency has evaluated dietary exposure to the fungicide residues for the commodities proposed and for the commodities which have established tolerances using data on anticipated residues. Available data indicate that approximately 25 to 35 percent of the total U.S. grass grown for seed acreage is treated with the fungicide. The livestock dietary burden was calculated using anticipated residues in feed items multiplied by the expected percent contribution to the diet and the maximum percent of the crop that is treated. This dietary burden was then compared with available data from feeding studies to determine anticipated residues in meat and milk. Using an upper bound oncogenic potency estimate of 0.079 $(mg/kg/day)^{-1}$ developed from a Weibull 82 model, the upper limit of the dietary carcinogenic risk is calculated to be in the range of 1 incident in a million (10^{-6}) using anticipated residues.

Based on the NOEL of 1.25 mg/kg of body weight/day in the 1-year dog study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.013 mg/kg bw/day for the U.S. population. The theoretical maximum residue contribution (TMRC) of 0.001073 mg/kg bw/day was calculated from existing tolerances. The current action will increase the TMRC by 0.000038 mg/kg of body weight/day. These tolerances and previously established tolerances utilize a total of 8 percent of the ADI. The TMRC assumes that residue levels are at the established tolerances and that 100 percent of the crop is treated.

Based upon the above risk estimate, the Agency believes that an extension of the interim tolerances would not pose a significant public health risk for the period of time indicated and would allow the Agency sufficient time to review the final reports on all of the required data.

EPA does not expect the required data will significantly change the above risk estimate. An animal metabolism study has been submitted and has undergone a perliminary review, and EPA already has partially sufficient residue data. Moreover, the residue contribution to the human diet which may result form these tolerances is only a small percentage (<1 percent) of the total amount of residue contribution from existing tolerances.

For the reasons described above, the Agency will extend the current tolerances for residues of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites in or on the following raw agricultural commodities until June 21, 1993: grass forage, 0.5 ppm; grass hay, 5.0 ppm; grass seed screenings, 10.0

ppm; kidney and liver of cattle, goats, hogs, horses, and sheep, 2.0 ppm. This extension will allow the Agency adequate time to receive and review all of the required data and reach a regulatory position on the appropriateness of permanent tolerances for this chemical in or on these commodities. If EPA decieds permanent tolerances are appropriate, EPA will issue a permanent tolerance in response to the petition. That tolerance will be in the form of a final rule and subject to the objections and hearing procedures under the FFDCA.

Based on the available data, EPA concludes that the interim tolerance levels currently established for these commodities during the period ending June 21, 1993, are adequate to protect the public health. Therefore, tolerances are established as set forth below. These tolerances will expire on June 21, 1993. Available data are inadequate to completely characterize metabolism in ruminants, and residue data are considered inadequate due to insufficient geographic and grass species representation. The tolerance levels were calculated to assure tolerances would not be exceeded, and residue data is available for Oregon where the majority of grass for seed is grown. Based on the review of the animal metabolism and field residue studies, the Agency will determine whether the issuance of a permanent tolerance is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: June 21, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.434 is amended in the table therein by revising entries for grass, forage; grass, hay; and grass seed screening; and by revising the entries for kidney and liver of cattle, goats, hogs, horses, and sheep, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
* * *	*	*
Cattle, kidney	2.0	06/21/93
Cattle, liver	2.0	06/21/93
* * *	*	*
Goats, kidney	2.0	06/21/93
Goats, liver	2.0	06/21/93
* * *	*	*
Grass, forage	0.5	06/21/93
Grass, hay	5.0	06/21/93
Grass, seed screenings	10.0	06/21/93
* * *	*	*
Hogs, kidney	2.0	06/21/93
Hogs, liver	2.0	06/21/93
* * *	*	*
Horses, kidney	2.0	06/21/93
Horses, liver	2.0	06/21/93
* * *	*	*
Sheep, kidney	2.0	06/21/93
Sheep, liver	2.0	06/21/93
* * *	*	*

[FR Doc. 91-15678 Filed 6-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPTS-50597; FRL-3930-7]

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is issuing this document to correct certain paragraph citations and cross-references that were inadvertently incorrect in several Federal Register documents. Because these are nonsubstantive changes, notice and public comment are not required.

EFFECTIVE DATE: Effective July 1, 1991, except for the amendment to § 721.1835, which becomes effective July 22, 1991.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Director, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. NE-G009, Northeast Mall, (202) 382-2253.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-8994 published in the Federal Register of April 17, 1991 (56 FR 15784) a paragraph was numbered incorrectly. In FR Doc. 91-9784 published in the Federal Register of April 25, 1991 (56 FR 19228) and in FR Doc. 91-12299 published in the Federal Register of May 23, 1991 (56 FR 23766), cross-references were inadvertently stated. This document corrects those typographical errors.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: June 12, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

§ 721.756 [Amended]

2. Section 721.756(b)(1) is amended by correcting the reference "§ 125(a) through (i)" to read "§ 721.125(a) through (i)".

§ 721.1590 [Amended]

3. Section 721.1590(a)(2) is amended by correctly designating paragraph "(a)(2)(i) *Industrial, commercial, and consumer activities.*" as paragraph "(a)(2)(ii) *Industrial, commercial, and consumer activities.*"

§ 721.1835 [Amended]

4. Section 721.1835(a)(2)(i)(B) is amended by correcting the reference "Requirements as specified in § 721.85(a)" to read "Requirements as specified in § 721.72(a)".

§ 721.1897 [Amended]

5. Section 721.1897(b)(2) is amended by correcting the reference "The provisions of § 721.185(b)(1) apply to this section." to read "The provisions of § 721.185 apply to this section."

[FR Doc. 91-15472 Filed 6-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPTS-50582A; FRL-3931-3]

Significant New Use Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 90-19185) published in the **Federal Register** of August 15, 1990 (55 FR 33296), establishing a final rule for substituted nitrile in § 721.1475. At that time § 721.1475 was assigned to the final regulation for pentachloroethane. Inadvertently the redesignation of § 721.1475 was omitted from FR Doc. 90-19185. This document corrects that omission. Because this is a nonsubstantive change, notice and public comment are not required.

EFFECTIVE DATE: This document is effective on July 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Room E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

Therefore, 40 CFR part 721 is corrected as follows:

Dated: June 25, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

PART 721—[CORRECTED]

§ 721.1475 [Corrected]

In the final rule published on August 15, 1990 at 55 FR 33297, the following correction is made. On page 33305, in the third column immediately preceding amendatory instruction 12., a new amendatory instruction 11a. is added as follows:

11a. Section 721.1475, pentachloroethane, is hereby redesignated as § 721.1525.

[FR Doc. 91-15676; Filed 6-28-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 302

RIN 3067-AB14

Civil Defense; State and Local Emergency Management Assistance Program (EMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the EMA program formula factors by removing from the calculation the factor which provides that 10 percent of the appropriated funds will be allocated on the basis of the State's population in EMA participant jurisdictions as a percentage of the State's total population. The rule increases by 10 percent the factor known as the "base," which now provides that 5 percent will be equally divided among the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The base will thus be 15 percent, which will be equally divided among each of the States, the District of Columbia, and the Commonwealth of Puerto Rico. In addition, any State which would receive less by formula share than its formula share for the previous fiscal year will be restored to its previous year's level from reserve funds if the reserve balance (when needs of insular areas and other priorities have been fulfilled) is sufficient to do this for all such States. This action is necessary to eliminate a factor that contributes an unnecessary element of uncertainty to the determination of formula grants and has not resulted in expansion of program participation in the way that was originally intended.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: C. Dwight Poe, FEMA, Office of Emergency Management, Washington, DC 20472 (202) 646-3492.

SUPPLEMENTARY INFORMATION: The intent of this regulation is to simplify the allocation of State and local Emergency Management Assistance (EMA) funds provided under the Federal Civil Defense Act of 1950, as amended. The rule change eliminates a complex 10 percent factor which used population of communities currently receiving EMA funding as a ratio of the total State population at the last available census. That 10 percent of the funds is now added to the 5 percent Equal Share Factor. Each recipient State, the District of Columbia, and Puerto Rico would have received an equal share under the 10 percent EMA Population Factor if they all had 100 percent of their communities participating in the EMA program. When the formula was published on September 28, 1983, FEMA's strategy was to cover all communities under the EMA program. The 10 percent EMA Population Factor of the Formula was established as an incentive for all local communities to participate in the State's program. Program growth, however, depends on greater funding, not on the status of current program participation by communities. While 100 percent participation remains a desirable goal, we realize that in peacetime sufficient funding to cover 100 percent of communities in every State is unlikely. Thus, the earlier strategy may be misleading as part of the formula.

Regardless of the 10 percent EMA Population Factor, FEMA's experience has been that most States do encourage the cooperation of local governments and that the 10 percent EMA Population Factor provides, at best, only a marginal incentive for additional local participation. Because of this, as well as States' civil defense surge planning for rapid expansion of civil defense capabilities in time of escalating crisis, FEMA believes that the 10 percent EMA Population Factor can be changed to an equal share for each State recipient of the formula funds without detriment to the program's objectives.

Mathematically, the 15 percent equal share is more reliable for program management because everyone knows what to expect, whereas under the 10 percent EMA Population Factor of the 4-factor formula, any increase in EMA coverage for one State must be derived by decreasing the shares of all the other States.

The removal from § 302.5(b) of the 10 percent of funding allocated on the basis of the State's population in EMA in favor of adding that percentage to the 5 percent factor to be shared equally by all eligible States was published as a proposed rule in the **Federal Register** dated August 26, 1987 (52 FR 32140).

Discussion of Comments on Proposed Rule

FEMA received a total of thirteen State responses on the interim rule: three States supported the proposed change; ten opposed it.

Comment: Six States commented that the change would reduce their funding, therefore causing the state of emergency management in their States to deteriorate. Another State commented that, "The 2 percent reserve fund should not be used for any other purpose until the reduced states have had their reductions reinstated."

Discussion: Provided the reserve balance is sufficient to cover all such States, any State receiving less in a fiscal year than in the fiscal year preceding it will be given an amount from the Reserve Fund balance to make the State share equal to the preceding year's allocation level. In fact, no State will be adversely affected in any year when funding is adequate to program needs. The regulatory language below states that, in any fiscal year when the balance of the reserve funds (after the Territories have been allotted their needed amounts) is sufficient, the priority use of the reserve funds balance will be to restore to the last year's level those States which would receive less funding by formula than in the previous year.

Comment: The change "does not give due regard to the majority of participating jurisdictions and those states experiencing increases in both total population and population at risk."

Discussion: Section 205(d) of the Civil Defense Act of 1950 requires only that due regard be given to: (1) The criticality of the target and support areas * * *; (2) the relative state of development of civil defense readiness of the State; and (3) population. Population increases are not updated in the EMA Population Factor except when the Census Bureau updates the decade census because annual Census Bureau estimates are not given below the State level, whereas the EMA Population is derived from official populations of communities. The capability to expand program coverage is not, however, a function of the formula. Program expansion depends on increased program allocations. The 33 percent State Population Factor, however, is updated annually to give due regard to the total population of the State, as well as the population at risk. The growth of population in a State is taken into account in the State Population Factor update based on latest Census Bureau estimates.

Comment: One State commented that, "The proposed formula change would negate our incentive to expand program coverage."

Discussion: Although the 10 percent factor was originally designed to encourage States to increase local participation in the EMA program by giving an incentive to add communities to the program, real program growth depends on increased funding in the annual budget. The EMA Population Factor, in fact, can only offer more money to a State within the formula by shaving money from other States based on complicated proportional calculations, which, over time, leads to less reliability of funding levels.

Comment: A State commented that, "The proposed rule * * * appears to penalize those states whose EMA participation rates are already high to accommodate those states whose rates are low," and "* * * for FEMA to propose a change (in an effort to equalize allocations) that adversely affects states that have established a high EMA participation rate as a 'fix' toward increasing EMA participation, exacerbates the problem." Another State commented that, "Future changes to the EMA allocation (should) not penalize those states with established high levels of EMA participation."

Discussion: The formula change is intended neither as a reward for those States whose EMA participation rates are low nor a penalty for those States whose EMA participation rates are high. No State will be accommodated at the expense of any other State. The 10 percent EMA Population Factor which this is intended to supersede, however, does accommodate low participation States, when their EMA coverage increases, by taking money from all other States, including from those with already high coverage. Under a provision included with the 3-factor version of the formula, each State will receive at least the amount of funds it received in the previous year, if sufficient reserve funds are available.

Comment: One State commented that, "* * * we feel that increasing the base factor needs to be logically accompanied by a formula component which includes favorable consideration to those states * * * that face extremely high degrees of risk in an attack environment." Another State commented that, "The 10 percent factor (should) be reallocated on an 'at risk' basis."

Discussion: All people are at risk from fallout in an attack and everyone is vulnerable to some types of local natural and technological disasters, which points to the need for a base or minimum level of preparedness. Degree of risk, however, is difficult to measure objectively and then properly weigh in an assigned factor. Consideration for giving resources to localities at high risk of direct effects from attack has been given by other elements of the civil defense program. In addition, changing geopolitical trends and circumstances could cause a reassessment of risks and strategic objectives.

Comment: "The total FEMA grants to state and local governments (should) be considered as part of the EMA allocation."

Discussion: This recommendation would require enactment of omnibus legislation to supersede several statutes enabling different programs with various missions and implementation strategies.

Regulatory Flexibility Certification

This rule will not have a significant economic impact upon a substantial number of small entities and has not undergone a regulatory flexibility analysis.

Environmental Assessment and Finding of No Significant Environmental Impact

FEMA has determined that this rule will have no effect on environmental quality and, therefore, in accordance with 44 CFR 10.8(c)(2)(i), is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Regulatory Analysis

This rule is not a "Major Rule" as the term is used in Executive Order 12291 and implementing Office of Management and Budget (OMB) guidance. It will not have an annual effect on the economy of $100 million or more, will not result in an increase in costs, and will not have a significant adverse impact 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. Hence, regulatory impact analyses are not necessary.

Paperwork Reduction Act

This rule does not contain information requirements that are subject to the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. 3501 *et seq.*) and

the OMB implementing regulation, 5 CFR Part 1320.

Federalism Executive Order

This rule does not have a substantial direct effect on States inasmuch as the proportional effect on the majority of States is less than 1 percent change.

List of Subjects in 44 CFR Part 302

Civil defense, Grants programs—National defense, Record and recordkeeping requirements.

For the reasons set forth in the summary, title 44, chapter I, subchapter E, part 302, Code of Federal Regulations, is amended as follows:

PART 302—[AMENDED]

1. The authority citation of part 302 continues to read as follows:

Authority: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

2. In § 302.5, paragraph (b)(5) is removed and paragraphs (b)(3) and (b)(4) are revised to read as follows:

§ 302.5 Allocations and reallocations.

* * * * *

(b) * * *

(3) Fifteen (15) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico.

(4) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in § 302.5(b) inequitable. Therefore, the Director will consider prior-year allocations, percentage of total United States population, and the factors set out in § 302.5(e) (1), (2), (4), and (5) in determining their allocations. The remaining balance of the reserve fund will then be used to restore any State which would receive less by formula share than its formula share for the previous fiscal year, provided that the reserve balance is sufficient to do this for all such States. Any remaining balance after this has been done will constitute a supplemental fund from which the Director will consider State requests for additional funding and the needs of any interstate civil defense authorities.

Dated: May 6, 1991.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-15438 Filed 6-28-91; 8:45 am]

BILLING CODE 6718-20-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

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

ACTION: Emergency rule; corrections.

SUMMARY: NMFS corrects errors in the emergency rule governing the Atlantic swordfish fishery published June 12, 1991 (56 FR 26934).

EFFECTIVE DATES: June 12, 1991, through December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, NMFS (F/CM3), 301-427-2347.

SUPPLEMENTARY INFORMATION: In rule document 91-13924 beginning on page 26934 in the issue of Wednesday, June 12, 1991, make the following corrections:

1. On page 26934, in the first column, under the "**SUMMARY**" heading, in the twenty-second line, replace "30,044" with "40,785" and replace "13,628" with "18,500".

2. On page 26934, in the first column, under the "**SUMMARY**" heading, in the twenty-fifth line, replace "2,969,956" with "2,959,215" and "1,347,172" with "1,342,300".

3. On page 26935, in the second column, under the "Drift Gillnets" subheading, in the thirty-first line, replace "84,127" with "120,955".

4. On page 26935, in the second column, under the "Drift Gillnets" subheading, in the thirty-second line, replace "38,160" with "54,865".

5. On page 26936, in the second column, in the twenty-fourth line, replace "30,044" with "40,785" and replace "13,628" with "18,500".

6. On page 26936, in the second column, in the twenty-sixth line, replace "2,969,956" with "2,959,215".

7. On page 26936, in the second column, in the twenty-seventh line, replace "1,347,172" with "1,342,300".

8. On page 26936, in the second column, in the thirtieth line, replace "25.8" with "18.8".

9. On page 26936, in the second column, in the thirty-third line, replace "9.2" with "6.7".

10. On page 26936, in the second column, in the thirty-sixth line, replace "90.8" with "93.3".

11. On page 26936, in the second column, in the forty-eighth line, delete the word "same".

12. On page 26936, in the second column, in the forty-ninth line, delete the word "as".

13. On page 26936, in the second column, in the fiftieth line, delete "estimated for 1989" and after "the", insert "estimated".

14. On page 26936, in the second column, in the fifty-first line, replace "76,387" with "112,851".

15. On page 26936, in the second column, in the fifty-second line, replace "34,649" with "51,189" and replace "90.8" with "93.3".

16. On page 26936, in the second column, in the fifty-third line, replace "84,127" with "120,955" and replace "38,160" with "54,865".

17. On page 26936, in the second column, in the fifty-fourth line, replace "116.4" with "125.1".

18. On page 26936, in the second column, in the fifty-fifth line, replace "52.8" with "56.7".

19. On page 26936, in the second column, in the fifty-sixth line, replace "656" with "902".

20. On page 26936, in the second column, in the fifty-eighth line, replace "0.9" with "1.2".

21. On page 26936, in the second column, in the sixty-first line, replace "7,740" with "8,088" and replace "3,511" with "3,669".

22. On page 26936, in the second column, in the sixty-second line, replace "9.2" with "6.7", replace "84,127" with "120,955", and replace "38,160" with "54,865".

23. On page 26936, in the second column, in the sixty-fourth line, replace "32.5" with "38.7" and replace "14.7" with "17.6".

24. On page 26936, in the second column, in the sixty-sixth line, replace "230" with "209".

25. On page 26936, in the second column, in the sixty-seventh line, replace "0.3" with "0.2".

26. On page 26936, in the third column, in the eighth line, replace "648" with "892".

27. On page 26936, in the third column, in the ninth line, replace "0.9" with "1.2".

28. On page 26936, in the third column, in the tenth line, replace "90.8" with "90.2" and replace "41.2" with "40.9".

29. On page 26936, in the third column, in the twelfth line, replace "38" with "30".

30. On page 26936, in the third column, in the thirteenth line, replace "32.9" with "38.5".

31. On page 26936, in the third column, in the fourteenth line, replace "14.9" with "17.5".

32. On page 26936, in the third column, in the fifteenth line, replace "60,088" with "81,569" and replace "27,256" with "36,999".

§ 630.27 [AMENDED]

33. On page 26940, in the second column, in § 630.27(b)(1)(i)(A), in the first line, replace "30,044" with "40,785" and replace "13,628" with "18,500".

34. On page 26940, in the second column, in § 630.27(b)(1)(i)(B), in the first line, replace "2,969,956" with "2,959,215" and replace "1,347,172" with "1,342,300".

35. On page 26940, in the second column, in § 630.27(b)(1)(ii)(A), in the first line, replace "30,044" with "40,785" and replace "13,628" with "18,500".

36. On page 26940, in the second column, in § 630.27(b)(1)(ii)(B) in the first line, replace "2,969,956" with "2,959,215" and replace "1,347,172" with "1,342,300".

Dated: June 26, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–15574 Filed 6–26–91; 3:34 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 126
Monday, July 1, 1991

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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580-AA15

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: In Compliance with the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) proposes to amend the United States Standards for Wheat as follows: (1) Remove the description red durum wheat from the definition of Unclassed wheat; (2) reduce the limit for stones from eight or more to four or more and eliminate the aggregate weight option; (3) reduce the tolerance for pieces of glass from two or more to one or more (zero tolerance); (4) establish a cumulative total for factors which may cause U.S. Sample grade; (5) reduce the limit for ergot from 0.30 percent to 0.50 percent by weight; (6) reduce the limit for the special grade light smutty wheat to be more than 2 smut balls; and (7) reduce the grading limits for foreign material. FGIS further proposes to revise inspection plan tolerances for wheat based on the proposed changes. The objective of this review is to ensure that the standards serve their intended purpose, the language is clear, and are consistent with FGIS policy and authority.

DATES: Comments must be submitted on or before August 30, 1991.

ADDRESSES: Written comments must be submitted to Allen Atwood, Federal Grain Inspection Service, USDA, room 0628-S, Box 96454, Washington, DC 20090-6454; telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Allen Atwood, TLX: 7607351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David R. Shipman, Chief, Standards and Procedures Branch, Federal Grain Inspection Service, USDA, Room 1661-S, Box 96454, Washington, DC 20090-6454; telephone (202) 382-0252.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action is classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection and recordkeeping requirements contained in this proposed rule are included under control number 0580-0013 now being reviewed by the Office of Management and Budget (OMB). Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Agriculture, room 3201, NEOB, Washington, DC 20503.

Background

FGIS published an advanced notice of proposed rulemaking in the **Federal Register** on November 27, 1989, (54 FR 48752) in accordance with Executive Order 12291 and Department Regulation 1512-1 to provide public notice that FGIS would conduct its periodic review of the United States Standards for Wheat (7 CFR Part 810). A comment period of 60 days was provided to interested persons. Prior to expiration, the comment period was extended until March 30, 1990 (55 FR 6996).

FGIS received a total of 19 comments during the 90-day comment period. The comments were submitted from foreign buyers, grain merchandisers, United States Senators, wheat processors, grain exchanges, producer associations, and grain trade associations. Comments included information and background regarding specific standards changes, such as defining Unclassed wheat, revising U.S. Sample grade criteria tolerances, revising smut and ergot tolerances, and establishing damage tolerances for specific kinds of damage. Other comments received included more general information regarding the principles and structure of standards, such as developing more objective tests, establishing export standards, establishing food-grade and feed-grade standards, and expressing results as a percentage by weight instead of by count. In addition to these comments, FGIS reviewed the wheat standards with the FGIS Advisory Committee, participants at the Grain Quality Workshops, and representatives from wheat-related associations.

Based on a review of the comments received and other information, FGIS is proposing seven changes to the wheat standards to reflect current market needs and to create incentives to maintain wheat quality in the future. The proposed changes are revisions to the definition for Unclassed wheat and sample grade criteria tolerances for stones and glass. Additionally, this proposal includes new criteria for U.S. Sample grade to encompass a cumulative total of other material in wheat and a revision to the special grade criteria for ergot and smut. Further, the proposal revises inspection plan tolerances for wheat based on the proposed revisions to the standards.

During the review of comments and other information to develop the proposed action, FGIS considered establishing grade limits for dockage starting with a 1.0 percent maximum limit for grades 1, 2, and 3 during the first year of implementation and gradually lowering the limit to 0.5 percent over a four year phase-in period. FGIS believes establishing maximum limits for dockage could serve as an incentive to produce, deliver, and

maintain cleaner wheat throughout the entire marketing system.

The concept of establishing grade limits for dockage was discussed with the FGIS Advisory Committee, participants at the Grain Quality Workshops, and several wheat-related associations prior to developing the proposed action for wheat standards. These discussions provided a mechanism to review the consequences of establishing dockage as a grading factor under the standards. FGIS' preliminary review of wheat dockage levels commonly found in the market indicates the establishment of any substantive grade limit to improve the cleanliness of wheat will involve varying degrees of change in harvesting and cleaning practices. At this time, FGIS cannot quantify the economic impact of these changes.

FGIS commissioned a study through the USDA Economic Research Service in June 1990 to determine the costs and benefits of cleaning grain. The report of findings for the cost and benefits associated with cleaning wheat is scheduled for completion in March 1992. Therefore, FGIS has decided to defer any action regarding grading standards for wheat dockage until the economic impact assessment is completed.

Red Durum Wheat

FGIS proposes to remove the description of red durum wheat from the definition of Unclassed wheat because (1) the Unclassed wheat definition encompasses wheats of an indeterminate class without the need to specify red durum wheat, (2) production of red durum wheat is low, and (3) it is rarely seen in the inspection system.

Stones

FGIS proposes to reduce the Sample grade tolerance for stones from eight or more to four or more and eliminate the aggregate weight provision. The basis of determination for stones will remain unchanged. The determination for stones will continue to be based on a sample after the removal of dockage.

Wheat is rountinely cleaned to remove foreign substances prior to milling. Most stones are removed during the cleaning process. However, stones are difficult to remove due to similar size or density to wheat kernels. Stones remaining in the wheat after cleaning may affect the milling operation and flour quality. Therefore, a reduction of the Sample grade limits for stones better reflects end-use quality needs.

FGIS proposes the elimination of the aggregate weight provision for stones because the probability that 1 to 3 stones in the cleaned sample would weigh in excess of 0.2 percent by weight is very small.

Glass

FGIS proposes to reduce the Sample grade tolerance for glass from two or more pieces in a representative sample to one or more (zero tolerance). FGIS proposes this revision because pieces of glass are rarely found in wheat and rarely cause a sample to grade U.S. Sample grade. Therefore, this proposal would create an incentive to maintain the current wholesomeness of wheat in the future while having minimal economic impact on the current market.

Cumulative Sample Grade Factors

FGIS proposes to establish a cumulative total for factors which may cause a sample to grade U.S. Sample grade. Any combination of stones, crotalaria seeds, castor beans, particles of unknown foreign substance(s) or commonly recognized harmful or toxic substances, or rodent pellets, bird droppings, or other animal filth would cause the wheat to be graded U.S. Sample grade if the cumulative total exceeds a count of four. A cumulative total limit would better identify wholesomeness by designation of a combination of deleterious foreign material, animal filth, and toxic substances as U.S. Sample grade.

Ergot

FGIS proposes to reduce the requirements for the Special grade "Ergoty wheat" from more than 0.30 percent to more than 0.05 percent by weight. FGIS proposes this revision because ergot is rarely found in wheat and rarely causes the sample to receive the "Ergoty wheat" designation. Therefore, this proposal would create an incentive to maintain wheat quality while having minimal economic impact on the current market.

Light Smutty Wheat

FGIS proposes a revision to the definition of Special grade "Light Smutty wheat" to improve the repeatability and reliability of inspection results as wheat is handled through the market system. This proposed standard revision would cause wheat to grade "Light Smutty wheat" on the basis of odor or the presence of more than two smut balls in a 250 gram portion. The current standard states Light Smutty wheat is wheat that has an unmistakable odor of smut, or which contains in a 250 gram portion, smut balls, portion of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size. Currently, Smutty wheat is wheat that contains, in a 250 gram portion, smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

The occurrence of smut is enhanced by a combination of snow cover, temperature, moisture, and presence of smut spores. Smut balls tend to break apart during the process of handling wheat so that even less than 14 smut balls in a sample can cause smut odor in wheat. The "Light Smutty wheat" designation of a majority of samples is due to odor rather than the quantity of smut balls. Therefore, a reduction of the limit of allowable smut balls from 14 to 2 would promote more reliable certification results throughout the market system.

Foreign Material

FGIS proposes to reduce the foreign material (FM) grade limits for U.S. Nos. 1, 2, and 3 from 0.5, 1.0, and 2.0 percent to 0.4, 0.7, and 1.3 percent, respectively. U.S. Nos. 4 and 5 would remain unchanged from the current standards. FGIS is proposing such action as an incentive to maintain low FM levels currently observed in grades 1, 2, and 3.

To illustrate the potential effects of this proposal, FGIS assembled data (tables 1, 2, and 3) on FM from export grain inspection data from 1985 through 1989 and New Crop Survey data from 1986 through 1989. The data indicates that low levels of FM are reported in export wheat shipments regardless of the grade assigned, and that FM seldom determines the grade in any class of wheat in export lots.

Table 1 shows that the average FM Levels, except Durum, are well within the grade limit for U.S. No. 2, which is the primary export grade. Durum is typically exported as U.S. No. 3 and the average FM level for Durum is well within the grade limit for that class. The FM averages by class were generally slightly better in 1989–1990 when compared to 1985–1988.

TABLE 1.—FOREIGN MATERIAL AVERAGES IN EXPORT SHIPMENTS

Class	1989–1990		1985–1988	
	Export Lots	Average	Export Lots	Average
Durum	183	0.43	626	0.55
HRS	885	0.29	1,910	0.33
HRW	942	0.30	2,604	0.30
SRW	530	0.18	843	0.24
WW	532	0.24	1,326	0.25
Total	3,072	0.27	7,311	0.32

HRS—Hard Red Spring wheat
SRW—Soft Red Winter wheat
HRW—Hard Red Winter wheat
WW—White wheat

Table 2 illustrates the cumulative percentage of samples at or below a certain percent of FM at export. Table 3 illustrates the same information for new crop wheat.

TABLE 2.—CUMULATIVE PERCENT OF FM IN EXPORT SHIPMENTS

FM %	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.3
Durum:									
89–90	36	57	77	86	93	98	100		
85–88	34	50	63	72	78	83	84	87	85
Hard Red Spring:									
89–90	77	92	96	99	100				
85–88	62	82	92	97	99	100			
Hard Red Winter:									
89–90	71	88	95	98	99	100			
85–88	71	90	97	99	100				
Soft Red Winter:									
89–90	96	99	100						
85–88	85	94	97	99	100				
White:									
89–90	87	95	99	100					
85–88	86	95	98	99	99	100			

TABLE 3.—CUMULATIVE PERCENT OF FM IN NEW CROP WHEAT

FM %	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.3
Durum:									
89	58	64	75	81	85	87	89	92	95
86–88	74	82	87	90	92	93	94	95	97
Hard Red Spring:									
89	90	92	94	94	95	96	96	96	97
86–88	90	92	94	95	96	96	97	97	98
Hard Red Winter:									
89	81	85	88	89	90	92	92	93	94
86–88	84	88	90	92	93	94	94	95	96
Soft Red Winter:									
89	92	95	95	96	96	96	97	97	98
86–88	89	92	94	95	96	96	97	97	98
White:									
89	84	87	89	89	91	92	93	94	95
86–88	94	95	96	96	97	97	97	98	98

Both tables 1 and 2 illustrate that the minor reductions proposed in the FM grade limits would affect very few, if any, export shipments. Tables 2 and 3 confirm that, with the exception of Durum, more than 80 percent of all export lots and new corp wheat samples examined had 0.4 percent or less FM. The levels of FM in Durum appear to vary more from year to year than the other classes.

Miscellaneous Changes

FGIS proposes to revise the format of the grade chart in section 810.2204(a), Grades and grade requirements for all classes of wheat, except Mixed wheat, to improve the readability of the grade chart. Also, the authority citation for Part 810 would be revised.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan (55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. The proposed chages to the wheat standards require changes to some breakpoints. Therefore, FGIS proposes to revise the breakpoints for

specific factors that appear in tables 23 and 24 of section 800.86(c)(2).

FGIS proposes to revise the breakpoints for Ergoty wheat from 0.19 to 0.03 and for Light Smutty wheat from 6 to 2. FGIS also proposes to revise the foreign material breakpoint for U.S. No. 3 from 0.5 to 0.4. In addition, FGIS proposes to revise the breakpoint for wheat dockage from 0.20 to 0.2.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be orally presented in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than 1 calendar year after promulgation unless, in the judgement of the Administrator, the public health, interest, or safety require that they become effective sooner.

Proposed Action

FGIS proppses to revise Section 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2), Tables 23 and 24, by revising the breakpoints for U.S. No. 3 foreign material, special grades Ergoty wheat and Light Smutty wheat, and dockage.

FGIS also proposes to revise section 810.2202(a)(7) by removing the description of red durum wheat from the defintion of Unclassed wheat.

FGIS further proposes to revise the format of the grade chart in Section 810.2204(a), Grades and grade requirements for all classes of wheat, except Mixed wheat, to improve readability. FGIS also proposes to revise the definition of U.S. Sample grade by reducing the tolerance for stones from eight or more to four or more and eliminating the aggregate weight option. Furthermore, FGIS proposes to reduce the tolerance for pieces of glass from two or more to one or more (zero tolerance) and to include a cumulative total for factors which may cause U.S. Sample grade. Additionally, FGIS proposes to reduce the grading limits for foreign material to 0.4, 0.7, and 1.3 percent for U.S. Nos. 1, 2, and 3, respectively.

FGIS also proposes to revise section 810.2205 paragraphs (a) and (c) to reduce the limit for ergot from 0.30 percent to 0.05 percent and to reduce the limit for light smutty wheat from more than 14 smut balls or an equivalent amount to more than 2 smut balls or an equivalent amount.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR part 800 and 7 CFR part 810 are proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.86(c)(2) Tables 23 and 24 are revised as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 23—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—				Maximum limits of—													
	Test weight per bushel				Damaged kernels										Wheat of other classes [4]			
	Hard Red Spring wheat or White Club wheat [1] (pounds)		All other classes and subclasses (pounds)		Heat-damaged kernels (percent)		Total [2] (percent)		Foreign material (percent)		Shrunken and broken kernels (percent)		Defects [3] (percent)		Contrasting classes (percent)		Total [5] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	58.0	−0.3	60.0	−0.3	0.2	0.2	2.0	1.0	0.4	0.2	3.0	0.3	3.0	0.7	1.0	0.7	3.0	1.6
U.S. No. 2	57.0	−0.3	58.0	−0.3	0.2	0.2	4.0	1.5	0.7	0.3	5.0	0.4	5.0	0.9	2.0	1.0	5.0	2.1
U.S. No. 3	55.0	−0.3	56.0	−0.3	0.5	0.3	7.0	1.9	1.3	0.4	8.0	0.5	8.0	1.2	3.0	1.3	10.0	2.9
U.S. No. 4	53.0	−0.3	54.0	−0.3	1.0	0.4	10.0	2.3	3.0	0.6	12.0	0.6	12.0	1.4	10.0	2.3	10.0	2.9
U.S. No. 5	50.0	−0.3	51.0	−0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	2.3	10.0	2.9

[1] These requirements also apply when Hard Red Spring or White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special Grade or Factor	Grade Limit	Break-point
Moisture	As specified by contract or load order grade	0.3
Garlicky	More than 2 per 1,000 grams	1–1⅓
Light Smutty	More than 2 smut balls per 250 grams	2
Smutty	More than 30 smut balls per 250 grams	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.05%	0.03
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade	0.2
Protein	As specified by contract or load order grade	0.5
Class and Subclass:		
Hard Red Spring:		
DNS	75% or more DHV	-5.0

TABLE 24—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS—Continued

Special Grade or Factor	Grade Limit	Break-point
NS	25% or more DHV but less than 75% DHV	−5.0
Durum:		
HADU	75% or more HVAC	−5.0
ADU	60% or more HVAC but less than 75% of HVAC	−5.0
Soft White:		
SWH	Not more than 10% White Club wheat	2.0
WHCB	Not more than 10% of other Soft White wheat	2.0
WWH	More than 10% WHCB and more than 10% of other Soft White Wheat	−3.0
		−3.0

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 is revised to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Subpart M—United States Standards for Wheat

4. Section 810.2202(a)(7) is revised as follows:

§ 810.2202 Definition of other terms.

(a) * * *

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes any wheat which is other than red or white in color.

* * * * *

5. Section 810.2204(a) is revised as follows:

§ 810.2204 Grades and grade requirements.

(a) Grades and grade requirements for all classes of wheat, except Mixed wheat.

Grading Factors	Grades U.S. Nos.				
	1	2	3	4	5
Minimum pound limits of:					
Test weight per bushel:					
Hard Red Spring wheat or White Club wheat	58.0	57.0	55.0	53.0	50.0
All other classes and subclasses	60.0	58.0	56.0	54.0	51.0
Maximum percent limits of:					
Defects:					
Damaged kernels:					
Heat (part of total)	0.2	0.2	0.5	1.0	3.0
Total	2.0	4.0	7.0	10.0	15.0
Foreign material	0.4	0.7	1.3	3.0	5.0
Shrunken and broken kernels	3.0	5.0	8.0	12.0	20.0
Total [1]	3.0	5.0	8.0	12.0	20.0
Wheat of other classes: [2]					
Contrasting classes	1.0	2.0	3.0	10.0	10.0
Total [3]	3.0	5.0	10.0	10.0	10.0
Maximum count limits of:					
Other material:					
Animal filth	1	1	1	1	1
Castor beans	1	1	1	1	1
Crotalaria seeds	2	2	2	2	2
Glass	0	0	0	0	0
Stones	3	3	3	3	3
Unknown foreign substance	3	3	3	3	3
Total [4]	4	4	4	4	4
Insect-damaged kernels in 100 grams	31	31	31	31	31

[1] Includes damaged kernels (total), foreign material, and shrunken and broken kernels.
[2] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[3] Includes contrasting classes.
[4] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown foreign substance.

Note: U.S. Sample grade is wheat that: (a) does not meet the requirements for U.S. Nos. 1, 2, 3, 4, 5; or (b) has a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or (c) is hearing or of distinctly low quality.

* * * * *

6. Section 810.2205 paragraphs (a) and (c) are revised as follows:

§ 810.2205 Special grades and special grade requirements.

(a) *Ergoty wheat.* Wheat that contains more than 0.05 percent of ergot.

* * * * *

(c) *Light smutty wheat.* Wheat that has an unmistakable odor of smut, or which contains in a 250 gram portion, smut balls, portion of smut balls, or spores of smut in excess of a quantity equal to 2 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

* * * * *

Dated: May 29, 1991.

John C. Foltz,

Administrator.

[FR Doc. 91–15595 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–EN–M

COMMODITY CREDIT CORPORATION

7 CFR 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5552 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule will authorize warehousemen to store sunflowers, canola, rapeseed, safflower, mustard, and flaxseed under the Uniform Grain Storage Agreement.

DATES: Comments must be received on or before July 31, 1991, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to send written comments to Jerry Goodall, Director, Storage Contract Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, 202–447–4018.

FOR FURTHER INFORMATION CONTACT: Jerry Goodall, Storage Contract Division, USDA, room 5968-South Building, P.O. Box 2415, Washington, DC 20013 (202) 447–7433.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this rule will not 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 governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Information collection requirements contained in this regulation (7 CFR part 1421) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560–0009. Public reporting burden for the collection of information contained in this regulation is estimated to average 30 minutes per response, 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 department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0009. Washington, DC 20503.

This action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this proposed rule. In addition, CCC is not required by 5 U.S.C. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed that must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities owned by CCC or which are serving as collateral for CCC price support loans.

Section VII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101–624, requires the Secretary to support the price of oilseeds produced on farms in each of the 1991 through 1995 marketing years. In order to carry a price support program for oilseeds, adequate commercial grain storage space must be available. Presently the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed permit only wheat, oats, corn, rye, barley, sorghums, flaxseed, and soybeans to be stored under the Uniform Grain Storage Agreement. Therefore, it is proposed that the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed be amended and that sunflowers, canola, rapeseed, safflower, mustard, and flax be included as eligible commodities that can be stored under the Uniform Grain Storage Agreement (An amendment to the Uniform Grain Storage Agreement will be required for those warehouses requesting to participate in the oilseeds storage price support program).

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR part 1421 be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1446, and 1447; 15 U.S.C. 714b and 714c.

2. Section 1421.5551, paragraph (a)(1) is revised to read as follows:

§ 1421.5551 General statement and administration.

(a) * * *

(1) Wheat, oats, corn, rye, barley, sorghums, flaxseed, soybeans,

sunflowers, canola, rapeseed, safflower, and mustard under a Uniform Grain Storage Agreement (which commodities are hereafter referred to as "grain").

* * * * *

Signed at Washington, DC on June 24, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-15590 Filed 6-28-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 720]

Winery Address for "Produced and Bottled by" (90F-254P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms has been petitioned by the Wine Institute of San Francisco, CA, to change the meaning of the term "produced and bottled by" on labels of wine. The Wine Institute's petition requests that ATF amend § 4.35(a)(1) to permit this term to be used when wine is fermented at a location other than at the bottling winery, in cases in which the bottling winery exercises control or ownership over the producing winery, and when both wineries are located within the same viticultural area.

The Wine Institute justified their petition on the basis of new land use regulations in some counties in California which restrict the use of winery land, thus compelling winery proprietors to conduct winemaking operations at more than one location. ATF is issuing this advance notice of proposed rulemaking to gather information from consumers and the wine industry regarding the possible impact of a change in the meaning of "produced and bottled by" on wine labels.

DATES: Written comments must be received by September 30, 1991.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 720).

Comments, not exceeding three pages, may be submitted by facsimile transmission to (202) 566-9854.

Copies of the petition and any written comments will be available for public inspection during normal business hours at: ATF Disclosure Branch, 650 Massachusetts Avenue, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, Washington, DC 20226; telephone (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes ATF to issue regulations with respect to the packaging, marking, branding, labeling, and size and fill of wine containers as will prohibit deception of the consumer, and provide the consumer with adequate information as to the identity and quality of the product, the net contents, and the manufacturer, bottler or importer of the product.

Regulations which implement these statutory provisions as they relate to the labeling and advertising of wine are set forth in 27 CFR part 4.

Under § 4.35(a), the label on a bottle of American wine must state the name of the bottler or packer, and the place where the wine was bottled or packed. In addition, § 4.35(a)(1) provides that if the bottler or packer is also the person who made not less than 75 percent of the wine by fermenting the must and clarifying the resulting wine, or if such person treated the wine in a manner as to change the class thereof, then the label may state that the wine was "produced and bottled by" or "produced and packed by" that person. Section 4.35(c) provides that the "place" stated on the label shall be the address of the premises at which the operations took place. This section further requires that the label show each address for which an operation is designated on the bottle. An example of such labeling would be "Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery."

Petition

ATF has received a petition from the Wine Institute requesting amendment of § 4.35, to allow wineries to use the term "produced and bottled by" on their labels, when the wine is, in fact, fermented off of the bottling winery's premises. The petitioner stated that the issue had been raised because of an increase in use restrictions on wineries by local ordinance, particularly in Napa County, California. These restrictive local ordinances compel many wineries to conduct production operations on more than one premises.

Thus, the petition proposes that § 4.35(a)(1) be amended to provide that the bottler or packer shall be deemed to have made no less than 75 percent of such wine in one single operation at the bottling premises, by fermenting the must and clarifying the resulting wine, even if the fermentation of the wine occurs at another location, if the following conditions exist:

(1) The off-site fermentation location is in the same viticultural area as the primary production and bottling facility;

(2) Both the off-site fermentation area and the primary production and bottling location are owned and/or controlled by the producing winery; and

(3) The wine must at no time leave the boundaries of the designated viticultural area.

The amendment would provide that, for purposes of this proposed change, the term "controlled" means property on which the bottling winery has the legal right to perform, and does perform, all of the acts common to wine production under the terms of a lease or similar arrangement of at least three years duration.

The petition also requests amendment of § 4.35(c) to provide that under the conditions listed above, the actual place of production would not have to be shown on the label.

Thus, under current regulations, if a winery proprietor made not less than 75 percent of the wine by fermenting the must and clarifying the resulting wine in Gilroy, California, and bottled the wine in San Mateo, California, the label would state "Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery." Under the amendment proposed by the Wine Institute, as long as the wine met the conditions listed above, the must could be fermented in Gilroy, and the label would still read "Produced and bottled at San Mateo, California, by XYZ Winery." In addition, a winery would be entitled to make the claim that the wine had been produced at San Mateo, as long as the above conditions were met, even if 50 percent of the wine was fermented at Gilroy and 50 percent of the wine was fermented at San Mateo, or if the production process was divided between Gilroy and San Mateo.

Discussion

Prior to the publication of T.D. ATF-53, 43 FR 37672, 54624, (August 23, 1978),

§ 4.35 provided two options for showing the address of the bottler on domestic wine labels. The label could state the place where the wine was actually packed or bottled, or the principal place of business of the packer or bottler, if in the same State where the wine was actually packed or bottled. In Notice No. 304, amended, 42 FR 30517 (June 15, 1977), ATF proposed amending § 4.35 to require that when a bottler elects to show who performed a function, the place where the function was performed, as opposed to the principal place of business, must be shown on the label. The amendment was proposed in response to several consumer comments. T.D. ATF–53 amended regulations in Part 4 to require that the actual address of the bottling premises be shown for all domestic wines, instead of allowing the bottler's principal place of business to be shown. In the preamble of that final rule, ATF stated that "[t]he Bureau is convinced that it is important that more precise information concerning who is responsible for bottling and where the bottling took place be used on wine labels. Therefore, this document adopts the form of address requirements as proposed." Thus, the current regulations were adopted with the intention of providing the consumer with specific information about the identity and address of the bottler and producer of the wine. However, ATF recognizes that changes in production methods may necessitate changes in labeling requirements. Therefore, ATF wishes to solicit comments from consumers and industry members on this issue. ATF is specifically soliciting comments on the following questions:

(1) Should the current definition of the term "produced and bottled by" in § 4.35 be amended? If so, why?

(2) Should the current name and address requirements in § 4.35(c) be amended to allow wineries to claim that a product was "produced and bottled" at the bottling location, even if the wine was fermented at a second location? If so, what if any limitations should be imposed? Which of the following limitations would you favor?

(a) The producing and bottling wineries must be under the same ownership and/or control.

(b) The producing and bottling wineries must be in the same viticultural area, and that viticultural area must appear on the label as the appellation of origin.

(c) The producing and bottling wineries must be in the same viticultural area, but that viticultural area need not appear on the label as an appellation of origin.

(d) The producing and bottling wineries need only be in the same State.

(3) Would the amendment proposed by the petitioner result in label information which is misleading to the consumer? If so, is there any additional information which should be required to overcome any misleading impressions?

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because this advance notice of proposed rulemaking, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this advance notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting a comment is not exempt from disclosure. Comments may be submitted by facsimile transmission to (202) 566–9854, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Drafting Information

The principal authors of this document are Nancy Sutton and Jim Hunt, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Authority: This advance notice of proposed rulemaking is issued under the authority of 27 U.S.C. 205.

Dated: May 2, 1991.

Daniel R. Black,

Acting Director.

[FR Doc. 91–15563 Filed 6–28–91; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 75

[Order No. 1504–91]

Child Protection Restoration and Penalties Enhancement Act of 1990

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Attorney General proposes to promulgate regulations to implement the responsibility given to him under the Child Protection and Obscenity Enforcement Act of 1988 (Subtitle N of title VII of Pub. L. 100–690, codified at 18 U.S.C. 2257), and the Child Protection Restoration and Penalties Enhancement Act of 1990 (Subtitle A of title III, of Pub. L. 101–647, amending 18 U.S.C. 2257). These Acts contain minimal statutory standards, enforceable before the issuance of supplementary regulations, which require all producers of matters

containing one or more visual depictions of actual sexually explicit conduct made after November 1, 1990 to keep records of the actual, previous, and assumed names, and of the dates of birth of each performer portrayed in such visual depictions. The proposed Attorney General regulations will promulgate supplementary standards governing compliance. These standards will impose additional record-keeping requirements on producers of matters containing one or more visual depictions of actual sexually explicit conduct made after the effective date of these regulations, including that such producers maintain at least one recent and recognizable photo identification document in order to enhance the reliability of the identifications contained in these records. The regulations will also specify the form and manner of affixation of a required statement describing the location of these records. This statement must be attached to all matters covered by this statute that are produced, manufactured, published, duplicated, reproduced, or reissued after the effective date of these regulations.

These regulations will replace the proposed rules that were to be promulgated at 29 CFR part 75. See 54 FR 8217 (Feb. 27, 1989).

DATES: Comments must be submitted on or before July 31, 1991.

ADDRESSES: Comments should be sent to Chief, Child Exploitation and Obscenity Section, Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Patrick Trueman at (202) 514–5780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 26, 1991, the Department of Justice agreed not to seek enforcement of the Child Protection Restoration and Penalties Enhancement Act of 1990 (Subtitle A of title III of Pub. L. 101–647, amending 18 U.S.C. 2257) until regulations implementing the Act become effective. This agreement not to enforce the Act extends to visual depictions of actual sexually explicit conduct made prior to the date upon which the implementing regulations become effective. As required by the Regulatory Flexibility Act, it is hereby certified that the proposed rule will not have as substantial economic impact on small business entities. 5 U.S.C. 605(B). It is not a major rule within the meaning of Executive Order No. 12291 of February 17, 1981.

List of Subjects in 28 CFR Part 75

Crime, Juvenile delinquency, Organization and functions (Government agencies).

By virtue of the authority vested in me by law, including 28 U.S.C. 509 and 510, and 18 U.S.C. 2257(g), title 29 of the Code of Federal Regulations is amended by adding a new part 75 to read as follows:

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990; RECORD-KEEPING PROVISIONS

Sec.
75.1 Definitions.
75.2 Maintenance of Records.
75.3 Categorization of Records.
75.4 Location of Records.
75.5 Inspection of Records.
75.6 Statement Describing Location of Books and Records.
75.7 Location of the Statement.

Authority: 18 U.S.C. 1028(d), 2257.

§ 75.1 Definitions.

(a) Terms used in this part shall have the meanings set forth in section 311 of the Child Protection Restoration and Peanlties Enhancement Act of 1990, Public Law 101–647, 104 Stat. 4789, 4816 (1990) (codified at 18 U.S.C. 2257).

(b) As used in this part, the term *picture identification card* shall mean a document issued by a government entity or by a private entity, such as a school or a private employer, that bears the photograph and the name of the individual identified. An identification document, maintained under § 75.2(a)(3) of this part and satisfying the definition of a *picture identification card,* can also serve as a picture identification card for purposes of § 75.2(a)(4), in accordance with the requirements set forth in § 75.2(b).

(c) As used in this part, the term *producer* means any person who provides the capital to assemble, film, or manufacture a book, magazine, film, videotape, or other matter intended for commercial distribution. A producer can be an individual, a corporation, or any other organization.

§ 75.2 Maintenance of records.

(a) Statutory requirements—In accordance with the requirements contained in 18 U.S.C. 2257(a)–(c), any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990 shall create and maintain the following records pertaining to each performer portrayed in such visual depiction:

(1) Records showing the name and date of birth of each performer;

(2) Records showing any name, other than each performer's present and correct name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name.

(b) Additional Regulatory Requirements—In addition to those records required by statute for all depictions made after November 1, 1990, as described in paragraph (a) of this section, any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after the effective date of these regulations shall also create and maintain the following records pertaining to each performer portrayed in such visual depiction:

(1) Records showing the age of each performer at the time that the depiction was made;

(2) Records showing a copy of the *identification document,* such as a passport, birth certificate, selective service card, driver's license, or identification card issued by a state, from which the producer obtained the name and date-of-birth information about the performer;

(3) Records showing a copy of one *picture identification card,* such as a passport, driver's license, work identification card, school identification card, or identification card issued by a state, which contains a recent and recognizable picture of the performer;

(4) Records showing the name, real or assumed, of each performer in a depiction of actual sexually explicit conduct, indexed by the title or identifying number of the book, magazine, periodical, film, videotape, or other matter.

(c) If the identification document required in paragraph (b)(2) of this section contains a recent and recognizable picture of the performer, the producer need not keep a record of an additional picture identification card. In such a case, however, the producer shall keep records showing a copy of one additional form of identification. Other forms of identification which may be used include another identification document, another picture identification card, a credit card issued in the performer's name, a social security card, a marriage certificate, an immigration card, or a baptismal certificate.

§ 75.3 Categorization of records.

All records required to be kept for visual depictions of actual sexually explicit conduct made after the effective

date of these regulations shall be categorized and retrievable according to all name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer. Only one copy of each performer's picture identification card and of the identification document must be kept, provided that such copies are categorized and retrievable according to any name, real or assumed, used by such performer.

§ 75.4 Location of records.

Any producer required by 18 U.S.C. 2257(a)–(c) or by this part to maintain records shall store much records at the producer's primary place of business. If the producer produces the book, magazine, periodical, film, videotape, or other matter as part of his control of, or through his employment with an organization, records shall be kept at the organization's primary place of business.

§ 75.5 Inspection of records.

Any producer required by 18 U.S.C. 2257(a)–(c) or by this part to maintain records shall make such records available to the Attorney General or his delegee for inspection at all reasonable times.

§ 75.6 Statement describing location of books and records.

Any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990, and produced, manufactured, published, duplicated reproduced, or reissued on or after the effective date of these regulations shall cause to be affixed to every copy of the matter a statement describing the location of the records required by this part. A producer may cause such statement to be affixed, for example, by instructing the manufacturer of the book, magazine, periodical, film, videotape, or other matter to affix the aforementioned statement.

(a) Every such statement shall contain:

(1) The title of the book, magazine, periodical, film, videotape, or other matter (unless the title is prominently set out elsewhere in or on the book, magazine, periodical, film, videotape, or other matter), or, if there is no title, a unique identifying number which differentiates this matter from other matters which the producer has produced;

(2) The date of production, manufacture, publication, duplication, reproduction, or reissuance of the matter; and,

(3) A street address at which the records required by this part can be found.

(b) If the producer is an organization, such statement shall also contain the name, title, and business address of the individual employed by such organization who is responsible for maintaining the records required by this part.

(c) The information contained in such statement must be accurate as of the first day on which the book, magazine, periodical, film, videotape, or other matter is sold, distributed, redistributed, or rereleased.

§ 75.7 Location of the statement.

All books, magazines, and periodicals shall contain the statement required in § 75.6 either on the first page that appears after the front cover, or on the page on which copyright information appears. In any film or videotape which contains credits for the production, direction, distribution, or other activity in connection with the film or videotape, the required statement shall be presented at the end of the end titles or final credits, and shall be displayed for a sufficient duration to be read by the average viewer. Any other film or videotape shall contain the required statement within one minute from the start of the film or videotape, and before the opening scene, and shall display the statement for a sufficient duration to be read by the average viewer. For all other categories not otherwise mentioned in this part, the statement is to be prominently displayed consistent with the manner of display required for the aforementioned categories.

Dated: June 19, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–15326 Filed 6–28–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–91–27]

Special Local Regulations for Marine Events; Chesapeake Challenge Powerboat Race, Chesapeake Bay, Sandy Point, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special local regulations for the Chesapeake Challenge Powerboat Race to be held in Chesapeake Bay, Sandy Point, Maryland, from September 11, 1991 through September 15, 1991. These regulations will govern vessel activity during the races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

DATE: Comments must be received on or before July 31, 1991.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–91–27) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica

L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Chesapeake Bay Power Boat Association submitted an application to hold the Chesapeake Challenge Power Boat Race from September 11 through September 15, 1991. Practice racing will be held on September 11 with actual racing being held on September 12 and 14. September 13 and 15 will be used as rain dates. As part of the application, the Chesapeake Bay Power Boat Association requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Proposed Regulations

This proposal seeks to regulate the area surrounding the Chesapeake Challenge Power Boat Race. The event will consist of approximately 100 powerboats, ranging from 21 to 45 feet in length, racing on a designated course within the regulated area. The competition will continue for 5 hours each day. Races will start off at Sandy Point State Park, run north to Baltimore Light (LLNR 7365), thence easterly to Upper Chesapeake Bay Lighted Buoy 3 (7665), thence southerly to Chesapeake Bay Channel Lighted Gong Buoy WR 81 (LLNR 7320), then back to Sandy Point State Park.

The regulated area will encompass the race course and a 500-yard buffer zone around it. This area will be closed to waterborne traffic while each race is being started and when the race boats cross Craighill Channel in the vicinity of Baltimore Light. Since the race boats will clear the starting area and cross Craighill Channel very quickly, commercial traffic should not be severely disrupted.

While the regulated area restricts vessel traffic along the western shore between the Magothy River and the Bay Bridge, a wide area of safe passage lies just to the east. North/south bound vessels may still transit through the "eastern channel" of the Chesapeake Bay during the periods of time the Special Local Regulations are in effect. The Maryland Pilots Association and commercial interests will be made aware of the times the regulations will be in effect.

Regulatory Evaluation

These proposed regulations are not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for five hours each day, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this proposal on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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.

Environmental Assessment

This rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket, and is available for inspection or copying where indicated under "**ADDRESSES**".

List of Subjects in 33 CFR part 100

Marine safety, Navigation (water).

Final Regulations:

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

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 temporary section 100.35–T0527 is added to read as follows:

§ 100.35-T0527 Chesapeake Bay, Sandy Point, Maryland.

(a) *Definitions.* (1) *Regulated area.* The waters of the Chesapeake Bay bounded by a line connecting the following points:

Latitude	Longitude
39°03'40.0"	76°24'23.5" W
39°05'54.0" N	76°17'46.0" W
38°59'42.0" N	76°22'41.0" W
38°59'42.0" N	76°23'42.0" W

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective period.* The regulations are effective for the following periods:

10 a.m. to 5 p.m., September 11, 1991.
10 a.m. to 5 p.m., September 12, 1991.
10 a.m. to 5 p.m., September 14, 1991.

If inclement weather causes the postponement of the event, the regulations are effective for the following periods:

10 a.m. to 5 p.m., September 13, 1991.
10 a.m. to 5 p.m., September 15, 1991.

Dated: June 17, 1991.

W.T. Leland,

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

[FR Doc. 91–15568 Filed 6–28–91; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3969-9]

Approval and Promulgation of Air Quality Implementation Plans; Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 13, 1991, the Iowa Department of Natural Resources (IDNR) submitted a State Implementation Plan (SIP) revision for major sulfur dioxide (SO_2) sources in Clinton, Iowa. The SIP revision consists of Administrative Orders and revised permits for the Archer Daniels Midland (ADM) wet corn milling facility and the Interstate Power (IP) M.L. Kapp electric utility steam generating facility. The effect of the Orders and revised permits is to require reductions of SO_2 emissions in Clinton, Iowa, to a level that will ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for SO_2. EPA is proposing in this notice to approve these SIP revisions. Federal approval will make the conditions of the Orders and permits federally enforceable.

DATES: Comments must be received on or before July 31, 1991.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of documents relevant to this proposed action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Division, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603 (FTS 276-7603).

SUPPLEMENTARY INFORMATION:

Background

The Federally approved SO_2 SIP emission limit in Clinton County, Iowa, which includes the city of Clinton, is 6.0 lb/SO_2 mmBtu (42 FR 27893). This emission limit is codified in the Iowa Administration Code, regulation 567-23.3(3)a(1), and is applicable to existing (in operation or under construction prior to September 23, 1970) solid fuel-burning units emitting sulfur compounds.

There are two major SO_2 emission sources in Clinton, Iowa—the Archer Daniels Midland (ADM) wet corn milling facility and the Interstate Power (IP) M.L. Kapp electric utility steam generating facility.

In early 1985 the IDNR conducted dispersion modeling which predicted violations of the SO_2 NAAQS in the Clinton, Iowa, areas. The primary (health) standard for sulfur oxides measured as SO_2 is 80$\mu g/m^3$ (0.5 ppm)—annual arithmetic mean, and 365 $\mu g/m^3$ (0.14 ppm)—maximum 24-hour concentration not to be exceeded more than once per year. The secondary (welfare) standard is 1300 $\mu g/m^3$ (0.5 ppm) maximum 3-hour concentration not to be exceeded more than once per year.

In April 1985 the state began monitoring ambient SO_2 concentrations in Clinton with one monitor located near the point of predicted maximum impact from ADM emissions—the Chancy Park parking lot. In 1985 there were seven violations of the SO_2 24-hour primary standard; in 1986 fourteen violations, including a high .305 ppm.; in 1987 three violations; and in 1988 one exceedance was recorded.

In 1987, a second SO_2 monitor was installed at the base of a bluff in Chancy Park near a tennis court. In seven months of operation in 1987 at the tennis court monitor there were four violations of the 24-hour primary standard; in 1988 eight violations; and in 1989 three violations. The last violation at either monitor was on May 4, 1989, and the last exceedance was on October 20, 1990, with a value of .186 ppm at the tennis court monitor. There have been no exceedances of the 3-hour standard since November 15, 1988.

Major Sources

The ADM facility consists of nine boilers with a total capacity of nearly 2,100 mmBtu/hr. The boilers are used for process heat and steam generation. Two of the boilers are gas fired and the remainder are coal fired. ADM has numerous stacks, the tallest being approximately 200 feet high. There are also some 65 minor "nontraditional" SO_2 emission points. These include vents, grain dryer exhausts, and emissions from a sulfur burner. The emissions range from a maximum 12 lbs/hr for a sulfur burner to .006 lb/hr from various roof vents from steep tanks.

The IP Company's M.L. Kapp utility plant consists of two boilers. Boiler #1 is a 219.3 mmBtu unit permitted in 1974 to burn coal, oil, or gas, and boiler #2 is a 1,932 mmBtu unit permitted in 1978 to burn coal. Both units were limited to emissions of 6 lbs/SO_2 per mmBtu. The units exhaust to 210 and 245 foot stacks, respectively.

The state began development of a control strategy in 1987, and undertook an extremely complex emission inventory and modeling assessment effort regarding ADM. The extensive modeling that was conducted confirmed that it would be necessary to control both the traditional (boilers) and nontraditional sources at ADM. The modeling also identified SO_2 ambient violations in an adjacent part of Clinton from a second source (the IP power plant).

Modeling

Part of the control strategy proposed by ADM was construction of a new stack of a height greater than the existing stack. The requirements of 40 CFR 61.100 (hh) through (kk) for justifying a stack height increase are applicable to this portion of the control strategy. For stack height increases after October 11, 1983, a source must show that maximum ground level concentrations are due in whole or in part to downwash, wakes, or eddy effects (40 CFR 51.100(kk)(2)). Fluid modeling is the best method to show excessive concentrations caused by downwash, wake, or eddy effects for the existing stack.

ADM subseqently undertook fluid modeling which confirmed that concentrations found with buildings present were predicted to be more than 40 percent higher than without the buildings present. This satisfies the requirements of 40 CFR 51.100(kk)(2) for justification of increasing a stack to formula GEP stack height after October 11, 1983. A stack height of 300 feet was found necessary to alleviate the influence from downwash and wake effects. The air disperson modeling also considered each unit as having a single stack so as not to allow credit for manifolding of the nine boilers into a single stack. The modeling established rates of 5.7 lb SO_2/mmBtu for boilers 1 and 2 and 6.0 lb SO_2/mmBtu for boilers 3-7 as the maximum allowable rate for compliance with the 3-hour, 24-hour, and annual NAAQS standards. As a result of negotiations with ADM by the state, the final emissions limits were established at 2.0 lb SO_2/mmBtu for boilers 1-5, and 3.0 lb SO_2/mmBtu for boilers 6 and 7. These rates are substantially below that required to demonstrate attainment. Therefore, remodeling at the lower rates was not required.

Modeling of IP emissions, where stack height and merged gas streams were not an issue, resulted in an allowable

emission rate of 4.3 lb SO_2/mmBtu from boiler #2, and boiler #1 was restricted to gas fired only.

EPA review has determined that all modeling analysis performed in conjunction with this demonstration was done in accordance with the guidance in EPA's Guideline on Air Quality Models (Revised) and Supplement A to the guideline. Additional information regarding the modeling demonstration for both sources is contained in the Technical Support Document which is available from the information contact listed in the front of this notice.

Consent Orders and Permits

Upon completion of the modeling analyses, the state negotiated a Consent Order and revised permits with ADM which, among other requirements, set an emission limit of 2.0 lb SO_2 mmBtu on boilers 1–5, and 3.0 lb SO_2 mmBtu on boilers 6 and 7. Compliance will be determined by continuous emission monitors and is based on a 24-hour rolling average. These emission limits are more than sufficient to ensure protection of the NAAQS as determined by the modeling results. The effect of the Consent Order and related permits will be to require reduction of actual SO_2 emissions from the ADM facility by 37 percent to 3,865 tons per year.

The state also negotiated a Consent Order and revised permits with Interstate Power Company for the M.L. Kapp plant. Emissions from the large generating unit will be limited to 4.3 lb SO_2 mmBtu based on a 3-hour rolling average. The smaller peaking unit will be restricted to gas fired only. Compliance will be determined by continuous emissions monitor. These limits will result in actual SO_2 emission being reduced by 28 percent to 3,310 tons per year.

Total SO_2 emissions from both sources are required to be reduced from 1985 actual emissions of 17,737 tons per year to 1991 permit limits of 12,173 tons per year, a 31 percent overall reduction.

The IDNR held a public hearing on the draft Administrative Orders, permits, and control strategy in Clinton, Iowa, on July 5, 1989. Proper notice was provided in accordance with 40 CFR 51.102. Following the public hearing, negotiations continued with ADM and IP resulting in a number of changes in the control strategy. Though technically significant, these changes were not a substantive change in the strategy; therefore, additional public hearings were not required.

The Clean Air Act Amendments of 1990, section 107(d)(3), authorize the EPA to designate new nonattainment areas. On January 18, 1991, the EPA notified the Governor of Iowa of its intent to designate Clinton County, Iowa, nonattainment for SO_2. The state was also advised to expeditiously submit its SIP revision for Clinton. As noted above, this information was submitted on March 13, 1991. Since there has not been an SO_2 violation in Clinton since May 4, 1989, and because EPA believes that the Orders and Permits that are the subject of this SIP revision will ensure attainment and maintenance of the SO_2 NAAQS, EPA does not now intend to designate Clinton County nonattainment.

Proposed Action

EPA is proposing to approve a revision to the Iowa SIP which provides for the attainment and maintenance of the SO_2 NAAQS in Clinton County, Iowa. The revision consists of Consent Orders and permits which restrict SO_2 emissions from ADM and the Interstate Power Company M.L. Kapp electric utility generating station in Clinton, Iowa.

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

This action has been classified as a Table 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 Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: June 21, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91–15586 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 80

[FRL–3970–7]

Fuels and Fuel Additives; Proposed Guidelines for Oxygenated Gasoline Credit Programs; Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearing.

SUMMARY: Section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIP's), and implement an oxygenated gasoline program. This requirement applies to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 parts per million or more, based on 1988 and 1989 data. The oxygenated gasoline program must require gasoline in the specified control area to contain no less than 2.7 percent oxygen by weight, on average, during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Section 211(m)(5) requires that EPA promulgate guidelines for state credit programs, allowing the use of marketable oxygen credits for gasolines with higher oxygen than required to offset the sale or use of gasoline with a lower oxygen content than required.

Section 211(k) of the Act requires EPA to implement two related programs which deal with reformulated gasoline. The primary program under that section requires that gasoline sold in the nine worst ozone nonattainment areas be reformulated to reduce toxic and ozone-forming volatile organic compound (VOC) emissions. The second program prohibits gasoline sold in the rest of the United States from becoming more polluting. These regulations implementing the reformulated gasoline requirements of the Act will take effect on January 1, 1995.

Today's notice announces a hearing to discuss both the proposed oxygenated fuels guidelines and the regulations regarding reformulated gasoline. The Notices of Proposed Guidelines for the oxygenated fuels program and the Notices of Proposed Rulemaking for regulations regarding the reformulated gasoline standards and gasoline pump

labelling for oxygenates will be published soon in the Federal Register. Copies will also be available at the Air Docket (address below) and will be on public display at the Office of the Federal Register (address below).

DATES: EPA will conduct a two-day public hearing on the oxygenated fuels guidelines and the reformulated gasoline regulations on July 15, 1991 from 9 a.m. to 5 p.m. and July 16, 1991 from 8 a.m. to 3 p.m.

EPA has engaged in the Regulatory Negotiation process to assist in developing these guidelines and regulations. If, after publication of the Notice of Proposed Guidelines (for oxygenated fuels) or the Notice of Proposed Rulemaking (for the reformulated gasoline regulations), but prior to the July 15–16, 1991, hearing, the Agency has issued a supplementary notice based upon the results of a consensus that is reached through a continuing negotiated rulemaking process, the public hearing will also cover the contents of that notice.

Requests to speak at the hearing and written questions for the hearing should be directed no later than July 8, 1991, to Alfonse Mannato, for the oxygenated fuels guidelines, and to Carol Menniga or Rick Rykowski, for the reformulated gasoline regulations (addresses and phone numbers are listed below).

ADDRESSES:

The hearing will be held at the Westpark Hotel, 1900 Fort Meyer Drive, Arlington, VA 22209, (703) 527–4814.

Copies of the information relative to this notice are available for inspection in the following public dockets: For the oxygenated fuels guidelines, Docket A–91–04; for the reformulated gasoline regulations, A–91–02; for the Regulatory Negotiation process regarding both oxygenated fuels and reformulated gasoline, Docket A–91–17. These dockets will be available at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Copies of the proposed guidelines and regulations will also be on public display at the Office of the Federal Register, 1100 L Street, NW., room 8301, Washington, DC 20408, (202) 523–5215, and can be viewed during regular business hours, (8:45 a.m–5:15 p.m.).

Written questions for the hearing, as well as requests to speak at the hearing, should be directed to Alfonse Mannato for the oxygenated fuels guidelines, and to Carol Menninga or Rick Rykowski for the reformulated gasoline regulations. Addresses are as follows:

Alfonse Mannato, Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street, SW. (EN–397F), Washington, DC 20460, Telephone: (202) 382–2637.

Carol Menninga, Standards Development and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4575.

Rick Rykowski, Standards Development and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4339.

As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato (202) 382–2637 (for the oxygenated fuels guidelines) and Rick Rykowski (313) 668–4339 or Carol Menninga (313) 668–4575 (for the reformulated gasoline regulations) at the phone number or address listed above.

Dated: June 26, 1991.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–15722 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004—AB37

[WO–630–4111–02–24 1A]

Onshore Oil and Gas Order No. 8—Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The proposed rule that provides for the issuance of Onshore Oil and Gas Order No.8—Well Completions, Workovers, and Abandonments was published in the Federal Register on May 6, 1991 (56 FR 20568), with a 60-day comment period. The comment period is being extended three weeks to July 26, 1991, in response to public requests.

DATES: The period for submission of comments is hereby extended to July 26, 1991. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday thorugh Friday.

FOR FURTHER INFORMATION CONTACT: Rudy Baier or Joe Lara (202) 653–2153.

Dated: June 25, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 91–15578 Filed 6–28–91; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 910650–1150]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes (1) for the Atlantic and Gulf migratory groups of king and Spanish mackerel, increases in TAC and allocations; (2) for the Gulf migratory group of king mackerel in the eastern area (off Florida), removal of the three-fish alternative bag limit available for persons fishing from charter vessels so that a bag limit of two per person per day would apply throughut the eastern area without regard to the type of vessel; (3) for the Atlantic migratory group of king mackerel, removal of the differential bag limits for northern and southern areas and an increase in the bag limit to five per person per day; and (4) for cobia, a clarification that the existing recreational/commercial daily bag limit of two per person applies regardless of the number of trips or the

duration of a trip. Changes in the TAC and allocations would be effective for the Atlantic migratory groups of king and Spanish mackerel and for the Gulf migratory group Spanish mackerel for the fishing year that commenced April 1, 1991, and for the Gulf migratory group king mackerel for the fishing year that commences July 1, 1991. The other changes would be effective upon publication. The intended effects are to protect the mackerels from overfishing and continue stock rebuilding programs, while still allowing catches by important recreational and commercial fisheries dependent on these species, and to clarify the regulations.

DATES: Written comments must be received on or before July 16, 1991.

ADDRESSES: Comments may be sent to and copies of the Draft Regulatory Impact Review may be obtained from: Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with 50 CFR 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Group's 1991 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to TACs, allocations, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year that began April 1, 1991, annual TACs be increased for the Atlantic migratory groups of king and Spanish mackerel to 10.50 and 7.00 million pounds (m. lbs.), respectively, and increased for the Gulf migratory group of Spanish mackerel to 8.60 m. lbs. For the fishing year beginning July 1, 1991, the Councils recommended that the annual TAC for the Gulf migratory group of king mackerel be increased to 5.75 m. lbs. All proposed TACs are within the range of the acceptable biological catch (ABC) and equal to, or closely approximately, the modal ABC values determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC, except for the Atlantic group Spanish mackerel, which is apportioned by a method established under amendment 4 to the FMP to attain a 50 percent recreational and 50 percent commercial allocation of TAC by the 1994/95 fishing year. Under that method and with the proposed TAC increase to 7.00 m. lbs., the Atlantic group Spanish mackerel would attain the 50/50 commercial/recreational allocation in the fishing year that began April 1, 1991. Also, the Gulf king mackerel commercial allocation is divided by fixed percentages into quotas for eastern and western zones. Under these percentages and the proposed TACs, 1991/92 allocations and quotas would be as follows:

Species	m. lbs.
Gulf King Mackerel—TAC	5.75
Recreational allocation (68%)	3.91
Commercial allocation (32%)	1.84
Eastern zone (69%)	(1.27)
Western zone (31%)	(0.57)
Gulf Spanish Mackerel—TAC	8.60
Recreational allocation (43%)	3.70
Commercial allocation (57%)	4.90
Atlantic King Mackerel—TAC	10.50
Recreational allocation (62.9%)	6.60
Commercial allocation (37.1%)	3.90
Atlantic Spanish Mackerel—TAC	7.00
Recreational allocation (50.0%)	3.50
Commercial allocation (50.0%)	3.50

The recreational fishery is regulated by both allocations and bag limits. For Atlantic group king mackerel, the Councils recommended increasing the bag limits from three to five fish per person per day in the northern area and from two to five fish per person per day in the southern area. The Councils noted that the group is not overfished, that the proposed TAC would increase the recreational allocation by 25 percent, and that last year's recreational catch may reach only 60 percent of its allocation. The Councils believe that a five-fish group-wide bag limit would facilitate achievement of the optimum yield for this segment of the fishery and may reverse economic declines in the charter vessel industry that have been attributed to the lower bag limits.

For Gulf group king mackerel, the Councils recommended a uniform bag limit of two fish per person per day in the eastern area (off Florida) in place of the current option for persons fishing from charter vessels of three per person per day, excluding operator and crew, or two per person per day, including operator and crew. The three-fish option for persons fishing from charter vessels in the remainder of the Gulf would remain in effect. The Councils' intents is to impose a bag limit for Gulf group king mackerel in the exclusive economic zone off Florida that is compatible with the bag limit in Florida's waters and to address persistent problems caused by early reduction to zero of the bag limits in the Gulf king mackerel recreational fishery. In three of the last four fishing years the recreational allocation was reached and zero bag limits were implemented in December, negatively affecting important winter and spring recreational fisheries. Recent analyses indicate that elimination of the three-fish charter vessel option could moderately reduce catch and prolong recreational harvest. Elimination of the option in the eastern area would have Gulf-wide benefits because approximately 80 percent of the annual recreational catch of Gulf group king mackerel has been taken from the eastern area in recent years.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

In addition to the Councils' recommended changes, NOAA proposes to clarify that the cobia daily bag limit of two fish per person applies regardless of the number of trips or the duration of a trip, as was intended in Amendment 5 to the FMP, which established the cobia daily bag limit. The changes to § 642.28 specify that the bag limits apply per day, consistent with the final rule implementing Amendment 5 (55 FR 29370, July 19, 1990).

Other Matters

This action is authorized by 50 CFR 642.27 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), first sentence	1.36	1.84
(a)(1)(i)	0.94	1.27
(a)(1)(ii)	0.42	0.57
(a)(2), first sentence	3.08	3.90
(b)(1)	2.89	3.91
(b)(2)	5.22	6.60
(c)(1)	2.99	4.90
(c)(2)	3.14	3.50
(d)(1)	2.26	3.70
(d)(2)	1.86	3.50

3. In § 642.28, paragraphs (a)(1), (a)(3)(i), (a)(3)(ii) introductory text, and (b) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * * (1) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21(a) or (c), or possessing the purse seine incidental catch allowance specified in § 642.24(d), is limited to the following:

(i) *King mackerel Gulf migratory group.*—(A) *Eastern area.* Possessing two king mackerel per person per day.

(B) *Central and western areas.* (*1*) Possessing three king mackerel per person per day, excluding the operator and crew, or possessing two king mackerel per person per day, including the operator and crew, whichever is the greater, when fishing from a charter vessel.

(*2*) Possessing two king mackerel per person per day when fishing from other vessels.

(ii) *King mackerel Atlantic migratory group.* Possessing five king mackerel per person per day.

(iii) *Spanish mackerel Gulf migratory group.*—(A) *Eastern area.* Possessing five Spanish mackerel per person per day.

(B) *Central area.* ossessing ten Spanish mackerel per person per day.

(C) *Western area.* ossessing three Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*—(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* ossessing five Spanish mackerel per person per day.

* * * * *

(3) * * * (i) For the purpose of paragraph (a)(1)(iv) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraphs (a)(1)(i) and (a)(1)(iii) of this section,

* * * * *

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ of the Gulf of Mexico and the Atlantic Ocean south of the Virginia/North Carolina border is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether or not the cobia are taken aboard a vessel with a commercial permit.

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50 CFR Part 646

[Docket No. 910657–1157]

RIN 0648–AD58

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would (1) add spadefish, lesser amberjack, and banded rudderfish to the management unit; (2) require a Federal permit to harvest fish in the snapper-grouper fishery in the exclusive economic zone (EEZ) in excess of the proposed bag limits, to fish for tilefish in the EEZ, or to use a sea bass trap in the EEZ; (3) require reports of catch and/or effort from fishermen and dealers; (4) establish minimum size limits for many of the species in the fishery; (5) require fish in the snapper-grouper fishery to be landed with head and fins intact, with a limited exception for greater amberjack; (6) establish a presumption that a wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ; (7) require that wreckfish be landed only between 8 a.m. and 4:30 p.m. and that 24–hour notice be given of a landing; (8) prohibit the harvest of Nassau grouper in the EEZ; (9) limit the harvest of greater amberjack and mutton snapper during their spawning seasons; (10) prohibit the use of fish traps in the EEZ and the use of sea bass traps in the EEZ south of Cape Canaveral, Florida; (11) in the EEZ north of Cape Canaveral, limit the harvest by sea bass traps to sea basses plus the proposed bag-limit amounts for other species; (12) prohibit the use of entanglement nets (gillnets, trammel nets, etc.) in a directed fishery for fish in the snapper-grouper fishery; (13) prohibit bottom longlining for wreckfish in the EEZ; (14) prohibit the use of longlines for fish in the snapper-grouper fishery in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters); (15) establish bag and possession limits for many species in the fishery; (16) remove Federal regulations for the Little River Reef special management zone (SMZ); (17) prohibit the use of powerheads within the SMZs off South Carolina; and (18) establish a framework procedure for establishing or modifying certain management measures. The intended effects of this rule are to prevent overfishing of the snapper-grouper resource; collect necessary data for management; provide for a flexible management system that minimizes regulatory delays and rapidly adapts to changes in resource abundance, new information, and changes in fishing patterns; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of snapper-grouper management measures.

DATES: Written comments must be received on or before August 15, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Peter J. Eldridge, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington DC 20503, (Attention: Desk Officer for NOAA).

Requests for copies of Amendment 4, which includes a regulatory impact review/initial regulatory flexibility analysis/environmental assessment,

should be sent to the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper–grouper species are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

In general, total landings, mean size of fish captured, and nominal catch per trip have declined substantially in the commercial snapper-grouper fishery. The commercial sector has shifted offshore and changed target species as traditional species have become less abundant. In addition, the commercial fishery, developed with relatively inefficient hook-and-line gear, has changed to more efficient longline and trap gear in order to catch enough fish to operate profitably. Spawning stock ratios (SSRs) derived from commercial samples show that gray snapper, vermilion snapper, red snapper, red grouper in south Florida, snowy grouper, and warsaw grouper are stressed. The SSRs for a number of species in the commercial sector are above levels defining overfishing.

Recreational total catches and catch rates for traditional snapper-grouper species such as red snapper, vermilion snapper, and several of the groupers have declined substantially during the 1980s, especially for the east coast of Florida. In Florida, declines may have begun as early as the 1960s; however, data are not available for that period. The average size of vermilion snappers, black sea bass, and groupers is quite small in recreational catches. The small average size of recreationally caught fish is explained, in part, because some species stratify in size by depth. Another equally or more important factor is that total inshore fishing pressure is so high that fish are not allowed to grow to optimum size before capture. As soon as fish reach legal size they are caught. This is a classic example of growth overfishing. SSRs derived from recreational catches of black sea bass, vermilion snapper, red porgy, red snapper, gag, scamp, red grouper, greater amberjack, snowy grouper, and speckled hind show that these species are overfished and require management.

Presently, 23 species are in a documented state of overfishing. Fifteen other species are thought to be overfished. Recreational fishing pressure likely will continue to increase as the coastal population continues to grow in the South Atlantic states. The virtual absence of larger fish in nearshore waters as well as the shifting of target species by both recreational and commercial sectors are other indicators that many, especially the traditionally highly prized species (red snapper, gag, scamp, etc.) are under intense fishing pressure and require more conservative management.

In addition to the serious problem of overfishing, the Council is also concerned about the lack of current and accurate biological, statistical, social, and economic information (including number of participants in the fishery) needed to best manage the fishery; the intense competition among recreational, part-time, and full-time commercial users of the snapper-grouper resource, and among commercial users employing different gears (hook and-line, traps, entanglement nets, longlines, and powerheads); habitat degradation and destruction by some types of fishing gear and the effect of poor water quality on fish stocks and associated habitat; and inconsistent state and Federal regulations, which complicate enforcement, create public confusion, and hinder voluntary compliance.

Amendment 4 is intended to reduce fishing mortality on overfished species; prevent overfishing of other species; provide for the collection of necessary data for management; promote orderly utilization of the resource; provide a flexible management system; minimize habitat damage; and promote public comprehension of, voluntary compliance with, and enforcement of the management measures.

PROPOSED MANAGEMENT MEASURES

Additions to the Management Unit

Spadefish, lesser amberjack, and banded rudderfish would be added to the species listed as "fish in the snapper-grouper fishery," that is, fish in the management unit. Neither minimum size limits nor bag limits for these added species would be implemented at this time, but data would be collected on the added species. NOAA is concerned that greater amberjack may be misidentified as lesser amberjack, almaco jack, or banded rudderfish. The addition of lesser amberjack and banded rudderfish will ensure that all of the look-alike jacks are included in the management unit and will allow timely addition, by the framework procedure, of any management measures that may become necessary.

Permits and Fees

To distinguish between the commercial and recreational fisheries, *i.e.* applicability of the bag limits, and to provide a sampling framework for data collections, a Federal permit would be required. To obtain a vessel permit, an owner or operator must document that in any one of the 3 calendar years preceding the application, at least 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing, or his or her gross sales of fish were more than $20,000. For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification must be met by an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator. A vessel permit issued upon the qualification of an operator would be valid only when that person is the operator of the vessel.

A qualifying owner or operator of a charter vessel or headboat could obtain a permit. However, a charter vessel or headboat would have to adhere to the bag limits when carrying a passenger who fishes for a fee or when there are more than three persons on board, including operator and crew.

A fee would be charged for each permit and trap identification tag issued. The fee would be the amount calculated in accordance with NOAA directives for the administrative costs of processing applications/permits (currently $23) and the cost of obtaining the tag (currently $1).

Data Collection

The owners or operators of permitted vessels, charter vessels, and headboats whose vessels were selected by the Science and Research Director, Southeast Fisheries Science Center, would be required to report catch and effort data. In addition, selected dealers would be required to report receipts of fish from fishing vessels and/or make records of receipt available to an authorized officer. Additional data would be collected by designees of the Science and Research Director and by authorized officers; and fishermen, including recreational fishermen, would be required, upon request, to make snapper-grouper species, or parts thereof, available for inspection. Data collected via these means are necessary for effective conservation and management of fish in the snapper-grouper fishery.

Minimum Sizes

This proposed rule would establish minimum size limits for many of the species in the fishery. The specific minimum size limits, alone or combined with bag limits, are calculated to rebuild those stocks that are overfished and to provide SSRs that would arrest or prevent overfishing and would be compatible, to the extent possible, with minimum size limits in adjoining state or Federal waters.

Heads and Fins Attached

All fish in the snapper-grouper fishery, except greater amberjacks taken in the commercial fishery, possessed in or taken from the EEZ would be required to have head and fins intact through landing. Such fish may be eviscerated, but must otherwise be maintained in a whole condition. An amberjack possessed aboard or landed from a vessel that has a permit may be deheaded and eviscerated, but must otherwise be maintained in a whole condition. These requirements would increase enforceability of minimum size limits and no-retention provisions and allow more accurate data collection. It is the Council's intent that the preparation for immediate consumption of legally caught and possessed fish aboard the vessel from which they were caught is not prohibited.

Wreckfish Provisions

This proposed rule would (1) establish a presumption that a wreckfish possessed shoreward of the outer boundary of the EEZ was harvested from the EEZ unless accompanied by documentation that it was harvested from other than the EEZ; (2) prohibit off-loading of wreckfish except from 8 a.m. to 4:30 p.m.; (3) require 24-hour prior notice of off-loading to the NMFS Law Enforcement Office; and (4) require all records of landings and purchases of wreckfish to be made available to an authorized officer. These measures are required to enforce the existing wreckfish trip limits and to monitor the wreckfish quotas. Suitable documentation to show that wreckfish came from other than the EEZ would include the markings required for interstate shipments of fish or wildlife by 50 CFR part 246, the name and home port of the vessel harvesting the wreckfish, the port and date of landing from the harvesting vessel, and a statement signed by the dealer attesting that the wreckfish were harvested from other than the EEZ.

Nassau Grouper

Nassau grouper catches have been very low—the commercial catch decreased from 3,000 pounds (1,362 kilograms) in 1986 to 0 in 1987, 451 pounds (205 kilograms) in 1988, and 515 pounds (234 kilograms) in 1989. The Council believes that the abundance of Nassau grouper, for reasons undetermined, is severely reduced in continental U.S. waters and that the species may be verging on threatened or endangered status; thus, a complete ban on retention of Nassau grouper is proposed.

Greater Amberjack and Mutton Snapper Spawning Season Limits

The possession or landing of greater amberjack in excess of the bag limit in or from the EEZ south of Cape Canaveral, Florida, would be prohibited during April, the peak month of spawning. This measure would not preclude commercial fishing south of Cape Canaveral during April as long as the harvest did not exceed the bag limit. The council is concerned about the high catch rates from spawning aggregations. Amberjack are densely aggregated and very aggressive during the spawning period, making them especially vulnerable to fishing. The spawning season limitations provide additional biological protection above that provided by the proposed bag and size limits. The only known areas of spawning are south of Cape Canaveral. Since the commercial fishery currently is not constrained by a quota, a commercial limitation during the spawning period would help prevent an excessive harvest from occurring. It is the Council's intent that, under the proposed prohibition, greater amberjack caught legally under the bag limit during the April spawning closure could be sold if in conformance with state law and the commercial size limit.

The possession or landing of mutton snapper in excess of that allowed within the snapper aggregate bag limit in or from the EEZ would be prohibited during May and June, the peak months of spawning. This measure would not preclude commercial fishing during these months as long as the harvest did not exceed the bag limits. As stated above, the Council is concerned about the high catch rates from spawning aggregations. Although mutton snapper are not overfished according to the SSR, members of the commercial industry are concerned about the status of mutton snapper and believe that a spawning closure would be beneficial. It is the Council's intent that mutton snapper caught under the bag limit in May and June may be sold in conformance with state law and the commercial size limit. Mutton snapper, like greater amberjack, are especially vulnerable during their spawning season because they are densely aggregated and aggressive. Because the commercial fishery is not constrained by a quota, catches and fishing mortality could increase dramatically if vessels not subject to the bag limit target these aggregations.

Fish Traps

This proposed rule would prohibit the use of fish traps in the EEZ off the south Atlantic states and the use of sea bass traps south of Cape Canaveral, Florida. North of Cape Canaveral, a permit would be required to use a sea bass trap in the EEZ and the catch from sea bass traps would be limited to the bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species except sea basses. Crustacean traps (blue crab, stone crab, and spiny lobster traps) used in the EEZ would be limited to the bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species. However, a person fishing from a vessel that has on board a permit for the snapper-grouper fishery who uses a crustacean trap in the EEZ north of Cape Canaveral would have the same limits as a person using a sea bass trap north of Cape Canaveral, *i.e.*, bag-limit amounts for fish in the snapper-grouper fishery that have a bag limit and zero for all other snapper-grouper species except sea basses.

In this proposed rule, the distinctions between fish traps, sea bass traps, and crustacean traps are primarily in terms of their catch. NOAA and the Council would prefer to make these differentiations based primarily on trap size and construction differences. Suitable criteria are being investigated. Comments on appropriate criteria are specifically requested.

Fish traps have been used in south Florida on a limited basis since 1919, but their use expanded during the late 1970's. Traps are inexpensively and easily constructed, and require little skill to fish, although the most successful fishing does depend on skill in locating productive fishing grounds. Traps can be fished unattended and catch a variety of species that may not be caught by other gear. Traps allow economic exploitation of low density fish stocks and permit fishing where other gear cannot be operated profitably. Also, traps can be fished in coralline regions where use of trawls and other nets are precluded or

restricted by the presence of hermatypic corals (Munro, 1973).

Because of theft, gear failure, storms, and loss of gear associated with larger vessels cutting buoy lines or dragging traps, many traps are lost annually. Losses of traps are reported to vary between 20 and 63 percent, with Dade County fishermen reporting losses as high as 100 percent annually. Lost traps may continue to fish for some time, causing death to trapped fish. Also, fishermen may damage corals while attempting to retrieve lost gear. Further, it is believed that traps moved by storms damage habitat, although the extent of potential damage is unknown. There is evidence that the use of grappling hooks to retrieve traps can result in damage to coralline areas.

Because of increasing consumer demand for non-traditional food fish, such as squirrelfish, spadefish, angelfish, goatfish, acanthurids, and others, the catch and sale of these species is increasing. Since many of these species have not been identified in commercial landings statistics, it has not been possible to document trends in landings of these species. The Council believes that the use of traps results in an unnecessary kill of tropical fish. Florida prohibited the harvest of tropical fish on March 1, 1991. The Council believes that allowing the use of fish traps in the EEZ would make it difficult or impossible to enforce that prohibition.

There is a bycatch of fish in traps and some fish are injured during the trapping process. Reports indicate that as many as 20 percent of trapped fish may sustain injuries (Sutherland and Harper, 1983) and a number of authors have reported mortalities ranging from 2 to 7.5 percent (Bohnsack, in press; Sutherland and Harper, 1983; Munro, 1974; Munro, Reeson, and Gaut, 1971). Prohibition of the use of fish traps would eliminate this source of injury and mortality.

The Council believes that traps are non-selective by size because red groupers recruit to the hook-and-line fishery at around 19 inches (48 cm) and to the trap fishery at around 11 inches (28 cm). The Council assumes that mesh sizes required to allow escape of groupers less than the 20-inch (50.8 cm) size limit would result in a *de facto* prohibition on use of fish traps.

It is currently difficult to enforce the prohibition of use of fish traps in Florida waters because traps can be used in the EEZ. Fish traps are fished unattended and are seldom, if ever, returned to land where they can be inspected by law enforcement officers. A Florida Marine Patrol officer in Key West, Florida, stated that 95 percent of the traps he has seized in areas closed to trap fishing were constructed illegally. The Council has concluded that at-sea enforcement required to monitor effectively and ensure compliance with existing fish trap regulations does not and will not exist. The Council believes that the lack of at-sea enforcement supports a ban on the use of fish traps, other than those used for sea basses, in the EEZ.

Because of the overfished condition of many species in south Florida waters caused by the combined fishing pressure of all users, serious user conflicts exist. The Council believes that the use of fish traps will continue to result in conflict. Also, the Council believes that the continued use of fish traps will allow a small group of fishermen to remove a disproportionate share of the available fish, thus precluding their use by other user groups. The Council also contends that the continued use of fish traps will not allow overfished species to be restored to acceptable levels of abundance.

Prohibiting the use of fish traps in the EEZ would be consistent with Florida's Coastal Zone Management Plan. The Council has concluded that a total prohibition on the use of fish traps for species other than sea basses is the most effective alternative to address problems in the fishery and to achieve the FMP's objectives.

The black sea bass trap fishery is primarily a winter fishery conducted offshore of the Carolinas when the shrimp fishery is closed. The main gear is reinforced blue crab traps. Trap loss is minimal because most fishermen either tend the trap continuously or bring them to shore when not fishing. Habitat damage is minimal because black sea bass traps are small, tended, and few in number. Tropical fish are absent from Carolina waters during the winter; hence, black sea bass traps have no impact on these species. Also, the species assemblage and depth distribution of snappers and groupers in Carolina waters are markedly different than those found in south Florida. Hence, the bycatch of snappers and groupers is minimal in the black sea bass fishery because black sea bass, generally, are found inshore of most snappers and groupers, especially in the winter. Black sea bass traps do not constitute a law enforcement problem because states north of Florida do not prohibit the use of fish traps. For these reasons, the proposed rule would allow the use of black sea bass traps to continue in the traditional Carolinas winter fishery.

Entanglement Nets

This proposed rule would prohibit the use of entanglement nets (including, but not limited to, gillnets and trammel nets) in the directed fishery for fish in the snapper-grouper fishery. The possession of fish in the snapper-grouper fishery aboard a vessel with an entanglement net aboard would be limited to the bag-limit amounts for species subject to a bag limit and to zero for other species.

Catch of snapper-grouper species by entanglement nets during 1988 was 1,398 pounds (635 kilograms) from North Carolina through Georgia (less than 1 percent of the North Carolina through Georgia catch) and 253,739 pounds (115,198 kilograms) from the Florida east coast (6 percent of Florida east coast catches). Much of the Florida landings are from a directed stab net fishery for gray snapper that operates in the EEZ. The Gulf of Mexico Fishery Management Council and Florida have prohibited entanglement nets in the directed fishery for the capture of reef fish. However, entanglement nets used for other species (mackerel) may have a bycatch of reef fish equal to prescribed bag limits. This proposed measure tracks Florida's regulations in its limits of species with and without bag limits. Florida prohibited entanglement nets because it is an inappropriate gear to use on live bottom. Some of the reef fish are not necessarily found on live bottom; however, many are, and fishermen use stab nets to catch gray (mangrove) snapper on the live-bottom areas. The proposed rule would prohibit entanglement nets in order to address the problem of intense competition among users and to prevent habitat degradation from nets becoming tangled in reef and live-bottom material. The Council concluded that entanglement nets are not an appropriate gear for the snapper-grouper fishery. The proposed prohibition would prevent use and expansion in North Carolina through Florida's east coast.

Bottom Longlining for Wreckfish

Bottom longlining for wreckfish was prohibited by emergency rule effective April 19, 1991, through July 18, 1991 (56 FR 18742, April 24, 1991). It is expected that the effectiveness of the emergency rule will be extended for an additional 90 days, through October 16, 1991. The Council included the prohibition in Amendment 4 to continue it on an indefinite basis. The full rationale for this prohibition is included in the emergency rule and is not repeated here.

Longlining for Snapper-Grouper in Water Less than 50 Fathoms

This proposed rule would prohibit the use of longline gear in a directed fishery for fish in the snapper-grouper fishery in

the EEZ in water with a charted depth of less than 50 fathoms (91.4 meters). The Council is concerned about the use of bottom longline gear targeting species in the snapper-grouper fishery in live-bottom areas. Habitat damage and intense competition among users are problems that arise when this gear is used shoreward of 50 fathoms (91.4 meters) where significant live bottom occurs and where competition with hook-and-line vessels occurs. The Council concluded that this gear is appropriate for use in the deep water snowy grouper/tilefish fishery where much of the bottom is mud with sparse live-bottom areas. Allowing use of this gear deeper than 50 fathoms (91.4 meters) would preserve the traditional fishery that takes place in deeper water and would keep longlines out of the live-bottom habitat.

Bag and Possession Limits

This rule proposes daily bag limits (1) for vermilion snapper—ten; (2) for all other snappers—ten, of which no more than two may be red snapper; (3) for groupers, excluding jewfish and Nassau grouper—five; (4) for greater amberjack—three; and (5) for jewfish and Nassau grouper—zero. These specific and aggregate bag limits are calculated to provide protection from overfishing; and, in combination with minimum size limits, assist in achieving the SSR levels. To the extent possible, the bag limits are compatible with state limits and with limits applicable to reef fish from the Gulf of Mexico EEZ.

Possession would be limited to 1 day's bag limit except (1) for persons aboard charter vessels and headboats, who may have no more than 2 days' bag limits when the fishing trip spans more than 24 hours; and (2) for persons aboard headboats, who may have no more than 3 days' bag limits when the fishing trip spans more than 48 hours and fishing occurred on at least 3 days.

Little River Reef Special Management Zone

This rule proposes to delete the Little River Reef SMZ because it is no longer in the EEZ. Construction of a jetty has extended the waters of South Carolina to include Little River Reef.

Powerheaas within SMZs off South Carolina

This proposed rule would prohibit the use of powerheads/bang sticks to take fish in the snapper-grouper fishery within the SMZs off South Carolina. This prohibition was requested by the South Carolina Wildlife and Marine Resources Department to prevent localized overfishing and to maximize the benefits for which the SMZs off South Carolina were created.

Framework Procedure for Management Measures

Amendment 4 would establish a framework procedure for establishing or adjusting specified management measures for species or species groups in the snapper-grouper fishery. The Council would appoint an assessment group (Group) that would assess annually the condition of selected snapper-grouper species in the management unit and review available economic and sociological assessments. The Group would present a report of its assessment and recommendations to the Council. The Council would consider the report and recommendations of the Group and hold public hearings at a time and place of the Council's choosing to discuss the Group's report. Prior to taking final action, the Council could convene the Advisory Panel and the Scientific and Statistical Committee to provide advice. After receiving public input, the Council would determine any necessary changes.

If the Council concluded that changes were needed, the Council would recommend them, in writing, to the Director, Southeast Region, NMFS (Regional Director). The Council's recommendations would be accompanied by the Group's report, relevant background material, draft regulations, a regulatory impact review, and public comments. This report would be submitted each year at least 60 days prior to the desired implementation date. The Regional Director would review the Council's recommendations, supporting rationale, public comments, and other relevant information. If the Regional Director concludes that the Council's recommendations are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director would recommend that the Secretary of Commerce (Secretary) publish proposed and final rules in the **Federal Register** of any changes prior to the appropriate fishing season. If the Regional Director rejected the recommendations, he or she would provide written reasons to the Council for the rejection, and existing regulations would remain in effect pending any subsequent action.

Appropriate management measures that may be implemented or adjusted by the Secretary under this framework procedure would be:

1. Specification or adjustment of maximum sustainable yield.

2. Specification or adjustment of acceptable biological catch (ABC) or an ABC range.

3. Setting or adjusting total allowable catch (TAC), quotas (including zero quotas), trip limits, bag limits (including zero bag limits), minimum sizes, gear restrictions (ranging from modifying current regulations to a complete prohibition), and season/area closures (including spawning closures). A TAC for wreckfish could not exceed 8 million pounds (3.632 million kilograms). The fishing year and spawning closure for wreckfish could not be adjusted by more than 1 month.

4. Implementing or modifying the timeframe for recovery of an overfished species.

This procedure would allow for regular stock assessments and provide for timely adjustments to the management program to prevent overfishing and/or rebuild a stock if overfished. It is the Council's intent that all species in the management unit receive periodic assessments. Further, it is the Council's intent that the Regional Director may close, by notice in the **Federal Register**, the fishery for any species or species group, *i.e.*, prohibit commercial landings and reduce the bag limit to zero, when a quota for such species or species group established under this framework procedure has been reached or is projected to be reached.

Additional Measures in Amendment 4

In addition to the above management measures, Amendment 4 would revise the lists of problems in the snapper-grouper fishery and objectives of the FMP; define overfishing, and establish a rebuilding plan for those species currently overfished; and authorize the Regional Director, in consultation with the Council, to designate special research zones where fishing may either be prohibited or permitted on a controlled basis. Additional information and rationale for these measures, as well as for the measures contained in this proposed rule, are contained in Amendment 4, the availability of which was announced in the **Federal Register** (56 FR 24773, May 31, 1991).

Endangered Species Impacts

Pursuant to section 7 of the Endangered Species Act of 1973, a biological assessment was prepared for Amendment 4, which concluded that neither the directed fishery for snapper-grouper nor implementation of the amendment would adversely affect any populations of endangered or threa ened

species. The Regional Director concurs with that conclusion.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 4, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

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

The Council prepared a regulatory impact review (RIR) for Amendment 4, which concludes that this rule, if adopted, would have overall net economic benefits. For some of the management measures, reasonable quantification of net benefits was possible. For other measures, necessary data were not available and costs and benefits could be quantified only in part. Impacts were analyzed qualitatively when data did not allow quantitative analysis. Although many of the management measures in Amendment 4 involve significant short-term economic impacts on both recreational and commercial fishermen, cost/benefit tradeoffs in the long term are expected to be mostly favorable. In many cases, the long-term costs associated with not taking action are expected to be higher than costs associated with the proposed measures.

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which describes the effects this rule, if adopted, would have on small business entities. Based on the IRFA, the Assistant Administrator has initially determined that this rule, if adopted, would have significant effects on small entities. As with the overall economic effects, the positive long-term impacts are expected to outweigh the negative short-term impacts. A copy of the RIR/IRFA is available upon request (see **ADDRESSES**).

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA is available upon request (see **ADDRESSES**) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains three new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) applications for vessel permits; (2) catch and effort reports from selected, permitted vessels; and (3) advance notice of landing wreckfish. The public reporting burdens for these collections of information are estimated to average 15, 10, and 3 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Revisions to the existing requirements are (1) catch and effort reporting by selected charter vessels; (2) catch and effort reporting by selected headboats; and (3) information collected by NMFS port agents from dealers (receipts and prices paid for fish in the snapper-grouper fishery) and from fishermen (fishing vessel inventory). In all three cases, previously voluntary reporting programs are made mandatory. The public reporting burdens for these revised collections of information are estimated to average 18, 10, and 10 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

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

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

2. In § 646.2, the definitions for *"Black sea bass trap"*, and *"Commercial fisherman"* are removed; in the definition of *"Fish in the snapper-grouper fishery"*, after the last species listed under "Grunts—Haemulidae", a new family, "Spadefishes—Ephippidae", and species are added, and in the listing of "Jacks—Carangidae", two species are added in alphabetical order by genus and species; new definitions for *"Charter vessel"*, *"Crustacean trap"*, *"Fork length"*, *"Headboat"*, and *"Sea bass trap"* are added in alphabetical order; and the definitions for *"Fish trap"* and *"Total length"* are revised to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 646.4(b) is considered to be operating as a charter vessel when it carries a passenger who pays a fee or

when there are more than three persons aboard, including operator and crew.

Crustacean trap means a type of trap historically used in the directed fishery for blue crab, stone crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, and spiny lobster.

Fish in the snapper-grouper fishery means the following species:

* * * * *

Spadefishes—Ephippidae
Spadefish, *Chaetodipterus faber*

* * * * *

Jacks—Carangidae

* * * * *

Lesser amberjack, *Seriola fasciata*

* * * * *

Banded rudderfish, *Seriola zonata*

* * * * *

Fish trap means a trap used for or capable of taking fish, except a sea bass trap or a crustacean trap.

Fork length means the distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 1.)

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 646.4(b) is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Sea bass trap means a trap, other than a crustacean trap, that contains at any time no more than 25 percent, by number, of fish in the snapper-grouper fishery other than bank, rock, and black sea bass.

* * * * *

Total length means the distance from the tip of the head (snout) to the furthermost tip of the tail (caudal fin), excluding any caudal filament. (See Figure 1.)

* * * * *

3. Section 646.4 is revised to read as follows:

§ 646.4 Permits and fees.

(a) *Applicability.* (1) To be eligible for exemption from the bag limits specified in § 646.23(b); to engage in a directed fishery for tilefish in the EEZ; to use a sea bass trap in the EEZ north of Cape Canaveral, Florida; or to fish for wreckfish in the EEZ, land wreckfish from the EEZ, or sell wreckfish in or from the EEZ, an owner or operator of a vessel must obtain a vessel permit. A vessel with longline gear and more than 200 pounds (90.7 kilograms) of tilefish aboard is considered to be in a directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 pounds of tilefish aboard harvested such tilefish in the EEZ.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, such vessel must adhere to the bag limits when operating as a charter vessel or headboat.

(3) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification specified in paragraph (b)(2)(ix) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(4) An owner or operator of a vessel using or possessing a sea bass trap in the EEZ must obtain a vessel permit, a color code, and a trap identification tag from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for a vessel permit.* (1) An application for a vessel permit must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(vii) If the applicant desires to fish for wreckfish, documentation that wreckfish caught by the vessel were sold during the 12 months preceding the application, or, in lieu thereof, documentation that equipment required specifically for use in the wreckfish fishery was on order or purchased for the vessel during the 12 months preceding the application;

(viii) If a sea bass trap will be used,

(A) The number, dimensions, and estimated cubic volume of the traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine traps for compliance with these regulations;

(ix) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application,

(A) More than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000; and

(x) Proof of certification, as required by paragraph (b)(3) of this section.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(ix) of this section before a permit is issued.

(c) *Change in application information.* The owner or operator of a vessel with a permit must notify the Regional Director in writing within 30 days after any change in the information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee of $23 will be charged for each permit issued under this section and a fee of $1 will be charged for each fish trap identification tag required under § 646.6(d). The appropriate fees are specified on each application form and must accompany each permit application or request for fish trap identification tags.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if:

(i) The application is complete;

(ii) The applicant has complied with all applicable reporting requirements of § 646.5;

(iii) The applicant meets the earned income requirement specified in paragraph (b)(2)(ix) of this section.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all

applicable reporting requirements of § 646.5, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless the vessel is sold or the permit is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A vessel permit issued under this section is not transferable or assignable. A person purchasing a permitted vessel who desires to fish for fish in the snapper-grouper fishery must apply for a permit in accordance with the provisions of paragraph (b) of this section. The copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, its state registration certificate that accompanies the application must be in the name of the new owner.

(h) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 646.6. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated on the application form, must accompany each request for a replacement permit.

4. In § 646.5, Figure 1 is redesignated as Figure 2 of this part and placed at the end of this part and § 646.5 is revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit has been issued under § 646.4(b), and that is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received by the Science and Research Director not later than the 7th day after the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms.

(b) *Charter vessels and headboats.* The owner or operator of a charter vessel or headboat that operates in the EEZ off the South Atlantic states or in adjoining state waters that is selected by the Science and Research Director must maintain a fishing record for each fishing trip, or a portion of such trips as specified by the Science and Research Director, on a form available from the Science and Research Director. These forms must be submitted on a periodic basis, as specified by the Science and Research Director.

(c) *Dealers.* A person who receives fish in the snapper-grouper fishery by way of purchase, barter, or trade that were harvested from the EEZ off the South Atlantic states or from adjoining state waters, and who is selected by the Science and Research Director, must provide information on receipts of such fish and prices paid, by species, to the Science and Research Director at monthly intervals, or more frequently if requested.

(d) *Commercial vessel, charter vessel, and headboat inventory.* A person described under paragraphs (a) or (b) of this section who was not selected to report must provide the following information when interviewed by the Science and Research Director:

(1) Name and official number of vessel and permit number, if applicable;

(2) Length and tonnage;

(3) Current home port;

(4) Fishing areas by statistical area (see Figure 2);

(5) Ports where fish were landed during the last year;

(6) Type and quantity of gear; and

(7) Number of full- and part-time fishermen or crew members.

(e) *Additional data and inspection.*

(1) Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a recreational fisherman, or a dealer are required upon request to make fish in the snapper-grouper fishery, or parts thereof, available for inspection by the Science and Research Director or an authorized officer.

(2) On demand, a fisherman or dealer must make available to an authorized officer all records of landings, purchases, barter, or sales of wreckfish.

5. Sections 646.6 and 646.7 are revised to read as follows:

§ 646.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 646.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition, a vessel for which a permit has been issued under § 646.4 to fish with a sea bass trap must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (60.8 cm) in diameter; and

(3) Permanently affixed to or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Traps.* Each sea bass trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number and a number indicating the specific tag number for that trap.

(e) *Buoys.* The use of buoys to identify sea bass traps is not required. Each buoy used to mark sea bass traps must display the designated color code and permit number so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches (5.1 cm) in height and affixed to each buoy.

(f) *Presumption of ownership.* A sea bass trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked or improperly marked sea

bass trap or buoy deployed in the EEZ is illegal. Such trap may be considered abandoned and may be disposed of in any appropriate manner by the Secretary. If an owner of an unmarked or improperly marked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information specified in § 646.4(b)(2) on an application for a vessel permit.

(b) Fail to display a permit, as specified in § 646.4(h).

(c) Falsify or fail to maintain or provide information required to be submitted or reported, as specified in § 646.5 (a) through (d).

(d) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(e) Fail to make available records of landings, purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).

(g) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(h) Sell, purchase, trade, barter, or to attempt any of the foregoing, of fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(i) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(j) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 646.21(c) and § 646.23(e).

(k) Possess wreckfish in or from the EEZ in excess of the trip limit, as specified in § 646.21(d)(1).

(l) Transfer wreckfish at sea, as specified in § 646.21(d)(2).

(m) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(4).

(n) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(o) During the wreckfish spawning-season closure or after a wreckfish quota closure, harvest or possess wreckfish in or from the EEZ, or purchase, barter, trade, offer for sale, or sell wreckfish taken from the EEZ, as specified in § 646.21(g) and § 646.24(b).

(p) During the greater amberjack and mutton snapper spawning-seasons, exceed the bag limits for those species, as specified in § 646.21 (h) and (i).

(q) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(r) Use a fish trap in the EEZ, or use a sea bass trap in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22 (b) and (c)(1).

(s) When using or possessing a sea bass trap north of Cape Canaveral, Florida, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(c)(2).

(t) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass trap that does not conform to the requirements for degradable openings and mesh sizes specified in § 646.22(c) (3) and (4).

(u) Pull or tend another person's sea bass trap except as specified in § 646.22(c)(5).

(v) Aboard a vessel that possesses or uses a crustacean trap in the EEZ, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d).

(w) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina and Cape Canaveral, Florida, as specified in § 646.22(e)(1).

(x) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(e) (2) and (3).

(y) Use an entanglement net to fish for fish in the snapper-grouper fishery in the EEZ; or, aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(f).

(z) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4 on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4 on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(g)(1).

(aa) Fish for wreckfish with a bottom longline; or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(g)(2).

(bb) Exceed the bag and possession limits, as specified in § 646.23 (a) through (c).

(cc) Transfer at sea fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f).

(dd) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.26 (b) and (c).

(ee) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

6. In § 646.21, paragraphs (a), (b), and (d) are revised and new paragraphs (f) through (i) are added to read as follows:

§ 646.21 Harvest limitations.

(a) *Minimum sizes.* (1) The following minimum size limits apply for the possession of fish in the snapper-grouper fishery in or from the EEZ:

(i) Black sea bass south of Cape Hatteras, North Carolina (35°15'N. latitude)—8 inches (20.3 centimeters), total length.

(ii) Lane snapper—8 inches (20.3 centimeters), total length.

(iii) Blackfin, cubera, dog, gray, mahogany, mutton, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 centimeters), total length.

(iv) Vermilion snapper—10 inches (25.4 centimeters), total length; or, for a vermilion snapper possessed aboard a vessel for which a permit has been issued under § 646.4—12 inches (30.5 centimeters), total length.

(v) Red snapper and black, gag, red, scamp, yellowfin, and yellowmouth grouper—20 inches (50.8 centimeters), total length.

(vi) Greater amberjack—28 inches (71.1 centimeters), fork length; or, for a greater amberjack possessed aboard a vessel for which a permit has been issued under § 646.4—6 inches (91.4 centimeters), fork length, or, if the head is removed, 28 inches (71.1 centimeters), measured from the center edge at the deheaded end to the fork of the tail. (See Figure 1 of this part.)

(2) A fish in the snapper-grouper fishery smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered. In the cases of vermilion snapper and greater amberjack, the minimum size limits specified for such fish possessed aboard a vessel for which a permit has been issued under § 646.4 apply to sale, purchase, trade, or barter or attempts thereof.

(b) *Head and fins intact.* (1) Except as specified in paragraph (b)(2) of this section, a fish in the snapper-grouper fishery possessed in or taken from the EEZ must have its head and fins intact through landing. Such fish may be eviscerated but must otherwise be maintained in a whole condition.

(2) A greater amberjack possessed aboard or landed from a vessel that has a permit specified in § 646.4 on board may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through landing.

* * * * *

(d) *Wreckfish limitations.* (1) No vessel on any trip may possess wreckfish in or from the EEZ in excess of 10,000 pounds (4,536 kilograms), whole or eviscerated.

(2) A wreckfish taken in the EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the EEZ, regardless of where the wreckfish was taken.

(3) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the EEZ or in an Atlantic coastal state will be presumed to have been harvested from the EEZ unless accompanied by documentation that it was harvested from other than the EEZ.

(4) A wreckfish may be off-loaded from a fishing vessel only between 8 a.m. and 4:30 p.m., local time, and such off-loading must be preceded by 24-hour notice to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, Florida, telephone (813) 893-3145.

* * * * *

(f) *Nassau grouper prohibition.* A Nassau grouper may not be harvested or possessed in or from the EEZ. A Nassau grouper taken incidentally in the EEZ by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(g) *Wreckfish spawning-season closure.* During the period January 15 through April 15, each year, it is prohibited to: fish for wreckfish in the EEZ; land wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. These prohibitions do not apply to trade in wreckfish that were harvested, landed, and bartered, traded, purchased, or sold prior to January 15 and were held in cold storage by a dealer or processor.

(h) *Greater amberjack spawning-season limit.* During April, each year, south of Cape Canaveral, Florida (28°35.1'N. latitude—due east of the NASA Vehicle Assembly Building), the possession of greater amberjack in or from the EEZ is limited to the bag limit specified in § 646.23(b)(4), regardless of whether or not the vessel from which such amberjack were taken has a vessel permit.

(i) *Mutton snapper spawning-season limit.* During May and June, each year, the possession of mutton snapper in or from the EEZ is limited to the number that may be contained in the aggregate bag limit for snappers specified in § 646.23(b)(2), regardless of whether or not the vessel from which such mutton snapper were taken has a vessel permit.

7. In § 646.22, Figure 1 is redesignated as Figure 3 of this part and placed at the end of this part; paragraphs (b) and (d) are revised; paragraph (c) is redesignated as paragraph (e); and new paragraphs (c), (f), and (g) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(b) *Fish traps.* A fish trap may not be used in the EEZ. A fish trap deployed in the EEZ may be disposed of in any appropriate manner by the Secretary.

(c) *Sea bass traps.*—(1) *South of Cape Canaveral.* A sea bass trap may not be used in the EEZ south of Cape Canaveral, Florida (28°35.1'N. latitude—due east of the NASA Vehicle Assembly Building). A sea bass trap deployed in the EEZ south of Cape Canaveral, Florida, may be disposed of in any appropriate manner by the Secretary.

(2) *North of Cape Canaveral.* A person aboard a vessel that has on board a permit specified in § 646.4 who uses or possesses a sea bass trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(3) *Openings and degradable fasteners.* A sea bass trap is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch (4.8-millimeter) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch (1.6-millimeter) diameter or smaller.

(4) *Mesh sizes.* A sea bass trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see Figure 3):

(i) Two-square-inch (5.08-square-centimeter) minimum open mesh area;

(ii) One-inch (2.54-centimeter) minimum length for shortest side;

(iii) Minimum distance of 1 inch (2.54 centimeters) between parallel sides of rectangular openings, and 1.5 inches (3.81 centimeters) between parallel sides of mesh openings with more than four sides; and

(iv) One-and-nine-tenths-inch (4.83-centimeter) minimum distance for diagonal measurement.

(5) *Tending traps.* A sea bass trap may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

(d) *Crustacean traps.* (1) A person aboard a vessel that has on board a permit specified in § 646.4 who uses or possesses a crustacean trap in the EEZ north of Cape Canaveral, Florida, may not possess in or from the EEZ fish in the snapper-grouper fishery exceeding the following:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species except bank, rock, and black sea bass—zero.

(2) A person aboard a vessel that does not have on board a permit specified in § 646.4 that uses or possesses a crustacean trap in the EEZ, or aboard a vessel that has on board a permit specified in § 646.4 who uses or possesses a crustacean trap in the EEZ south of Cape Canaveral, Florida, may not possess on any trip fish in the snapper-grouper fishery exceeding the following limits:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species—zero.

* * * * *

(f) *Entanglement nets.*— (1) An entanglement net, including, but not limited to, a gillnet and a trammel net, may not be used to fish for fish in the snapper-grouper fishery in the EEZ. A person aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board is limited on that trip to:

(i) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(ii) All other species in the snapper-grouper fishery—zero.

(2) For the purposes of this paragraph (e), an entanglement net is a flat, unmoored net, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

(g) *Longlines.*— (1) *All fish in the snapper-grouper fishery.*

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) Where the charted depth is less than 50 fathoms (91.5 meters), as shown on the latest editions of NOAA coast charts (1:80,000 scale); or

(B) Without a permit specified in § 646.4 on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters), or without a permit specified in § 646.4 on board, is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) For the purpose of this paragraph (f)(1), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(2) *Wreckfish.* A bottom longline may not be used to fish for wreckfish. A person aboard a vessel that has a longline on board may not possess a wreckfish in or from the EEZ. For the purposes of this paragraph (f)(2), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 miles (2.4 kilometers) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

8. Section 646.23 is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) *Applicability.* (1) Bag limits apply to a person who fishes in the EEZ from a vessel—

(i) That does not have on board a permit specified in § 646.4; or

(ii) That is operating as a headboat or charter vessel.

(2) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing a sea bass trap or a crustacean trap in the EEZ. See § 646.22 (c)(2) and (d).

(3) Special limitations on possession of fish in the snapper-grouper fishery apply to a person fishing with or possessing an entanglement net in the EEZ and fishing with or possessing a longline in the EEZ in water with a charted depth of less than 50 fathoms (91.5 meters). See § 646.22 (f)(1) and (g)(1)(ii).

(b) *Bag limits.* Daily bag limits per person are:

(1) Vermilion snapper—10.

(2) Snappers, excluding vermilion—10, of which no more than 2 may be red snapper.

(3) Groupers, excluding jewfish and Nassau grouper—5.

(4) Greater amberjack—3.

(5) Jewfish and Nassau grouper—0.

(c) *Possession limits.*

(1) Except as specified in paragraph (c)(2) of this section, a person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any fish in the snapper-grouper fishery in excess of the bag limits specified in paragraph (b) of this section.

(2) Provided the vessel has two licensed operators aboard, as required by the Coast Guard for trips of over 12 hours, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits; or

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of fish in the snapper-grouper fishery.* A fish in the snapper-grouper fishery subject to a bag limit specified in paragraph (b) of this section taken in the EEZ by a person subject to the bag limits, as specified in paragraph (a) of this section, may not be transferred at sea, regardless of where such transfer takes place; and such fish may not be transferred at sea in the EEZ, regardless of where such fish was taken.

9. Section 646.25 is revised to read as follows:

§ 646.25 Adjustment of management measures.

In accordance with the procedures of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic, the Regional Director may establish or modify for species or species groups in the snapper-grouper fishery the following: maximum sustainable yield, acceptable biological catch, total allowable catch, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), seasonal or area closures, and the time frame for recovery of an overfished species.

10. In § 646.26, paragraph (a)(1) is removed; paragraphs (a)(2) through (a)(22) are redesignated as paragraphs (a)(1) through (a)(21); in paragraph (c)(1) introductory text, the reference to "paragraphs (a) (1) through (19)" is revised to read "paragraphs (a)(1) through (a)(18)"; in paragraph (c)(1)(ii), the parenthetical phrase "(including powerheads)" is removed; in paragraph (c)(2), the reference to "paragraphs (a) (20) and (21)" is revised to read "paragraphs (a)(19) and (a)(20)"; in paragraph (c)(3), the reference to "paragraphs (a) (20) and (a)(22)" is revised to read "paragraphs (a)(19) and (a)(21)"; and a new paragraph (c)(4) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(c) * * *

(4) In the SMZs specified in paragraphs (a)(1) through (a)(10) of this section, a powerhead may not be used to take a fish in the snapper-grouper fishery. Possession of a powerhead and a mutilated fish in the snapper-grouper fishery in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

11. A new Figure 1 is added as Figure 1 of this part as follows:

BILLING CODE 3510-22-M

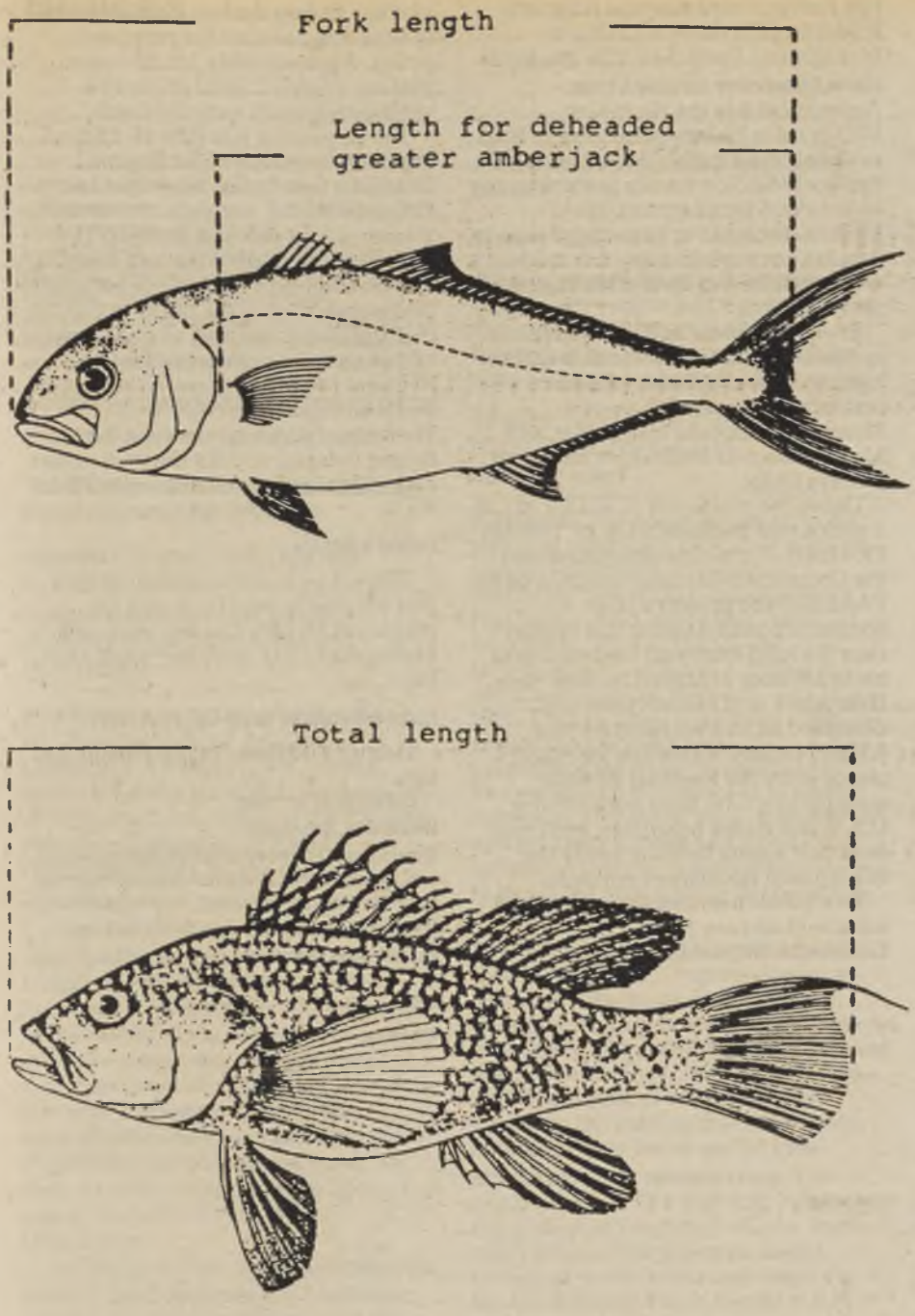

Figure 1. Illustrations of length measurements.

[FR Doc. 91-15577 Filed 6-26-91; 4:36 pm]
BILLING CODE 3510-22-C

50 CFR Part 651

[Docket No. 90927-1123]

Northeast Multispecies Fishery

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

ACTION: Final notice of intent to take no further action regarding Flexible Area Action System No. 5.

SUMMARY: NOAA issues this notice to inform the public and the fishing industry that the Northeast Regional Director (Regional Director) has concurred with the New England Fishery Management Council's Multispecies Finfish Committee's (Committee) recommendation to take no further action regarding Flexible Area Action System No. 5 (FAAS No. 5) because sea sampling and monitoring of the Jeffreys Ledge and Stellwagen Bank areas have not indicated that significant discards of small cod are occurring. Public comments received, both written and at public hearings, also failed to support the belief that significant discards of small cod are occurring.

ADDRESSES: Copies of the Regional Director's fact finding reports and the New England Fishery Management Council's (Council) impact analyses may be reqested from the New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01960.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe (NMFS, Resource Management Specialist), 508-281-9272.

SUPPLEMENTARY INFORMATION: Amendment 3 to the Northeast Multispecies Fishery Management Plan established a Flexible Area Action System (FAAS), whereby protection can be provided to concentrations of juvenile, sublegal, or spawning fish. Regulations implementing Amendment 3 were published on December 22, 1989 (54 FR 52803).

FAAS No. 5 was initiated by reports to the Chairman of the Committee that high discards of Atlantic cod were occurring in areas offshore of Massachusetts, New Hampshire, and Maine known as Stellwagen Bank and Jeffreys Ledge.

Under the provisions of 50 CFR 651.26, a notice was pubished May 29, 1991 (56 FR 24169). The notice announced that the Council would consider action under FAAS No. 5 to protect a large concentration of Atlantic cod smaller than the legal minimum landing size in areas offshore of Massachusetts, New Hampshire, and Maine (generally described as Stellwagen Bank and Jeffreys Ledge). A fact-finding report prepared by the Regional Director summarizing data from sea sampling, U.S. Coast Guard boardings, and input from port agents failed to verify the existence of the discard problem.

Two public hearings for FAAS No. 5 were held on June 13, 1991, in Gloucester, Massachusetts, and on June 14, 1991, in East Boston, Massachusetts, to hear comments on the proposed action. Approximately 135 interested persons attended. In addition, five written comments were received.

The Committee met June 14, 1991, to consider the results of the Regional Director's fact-finding investigations, the Council's impact analyses of alternative measures, and public comments. The Committee concluded that sea sampling and monitoring of the Jeffreys Ledge and Stellwagen Bank areas failed to indicate that significant discards of small cod are occurring and recommended to the Regional Director that no further action be taken regarding FAAS No. 5. Therefore, NOAA is informing the fishing industry and the Committee that no action will be taken regarding FAAS No. 5.

Other Matters

This action is authorized by 50 CFR part 651 and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

List of Subjects in 50 CR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: June 25, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-15552 Filed 6-28-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 126
Monday, July 1, 1991

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 AGRICULTURE

The Citizens' Advisory Committee on Equal Opportunity; Renewal

AGENCY: Office of Advocacy and Enterprise, USDA.

ACTION: Renewal of the Citizens' Advisory Committee on Equal Opportunity.

SUMMARY: In accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given that the Secretary of Agriculture has renewed the Citizens' Advisory Committee on Equal Opportunity for a 2-year period.

SUPPLEMENTARY INFORMATION: The Committee will focus on the recruitment, employment, and retention of minorities in agriculture related careers. The Secretary has determined that the work of the Committee is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means to obtain the necessary information.

The Secretary has determined that the work of the Committee is in the Public interest and is in connection with the duties of the Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Steven Chang, Office of Advocacy and Enterprise, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, (202) 447–7381.

Done in Washington, DC, this 25th day of June 1991.

Charles R. Hilty,

Associate Deputy Secretary.

[FR Doc. 91–15604 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–94–M

Animal and Plant Health Inspection Service

[Docket No. 91–058]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to advise the public of veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated, by the Animal and Plant Health Inspection Service, during the months of January, February, and March 1991. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to notify interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the listing.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4873. For copies of the list or to be placed on the mailing list, write to Ms. Montgomery at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the lists for January, February, and March 1991. The list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **"FOR FURTHER INFORMATION CONTACT."**

Done in Washington, DC, this 26th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–15591 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–34–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agriculture Research and Extension Users Advisory Board.

Date: August 14–16, 1991.

Time: 8:00 a.m.–5:00 p.m., August 14, 1991; 8:00 a.m.–5:00 p.m., August 15, 1991; 8:00 a.m.–12 noon, August 16, 1991.

Places: Inn on the Park and Forest Products Laboratories, Madison, Wisconsin.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To meet with the Joint Council and review forestry research and extension programs; learn about Total Quality Management; and determine how the Joint Council and Users Advisory Board will jointly comply with new responsibilities in the Food, Agriculture, Conservation, and Trade Act of 1990.

Contact person for agenda and more information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3684.

Done in Washington, DC this 14th day of June, 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 91–15594 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Little Rock (AR) and Los Angeles (CA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation in the geographic areas currently assigned to the Little Rock Grain Exchange Trust (Little Rock) and Los Angeles Grain Inspection Service, Inc. (Los Angeles).

DATES: Comments must be postmarked on or before August 15, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA). Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 1, 1991, **Federal Register** (56 FR 19977), the Service asked persons interested in providing official inspection services within the Little Rock or Los Angeles geographic areas to submit an application for designation. Applications were to be postmarked by May 31, 1991. Little Rock, the only applicant, applied for the entire area currently assigned to it. There were two applicants for the Los Angeles designation, Los Angeles and the California Department of Food and Agriculture, and each applied for the entire area.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1991.

J. T. Abshier

Director, Compliance Division

[FR Doc. 91–15461 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Designation Applicant in Portions of Indiana, Kentucky, and Tennessee

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicant for designation in the geographic area currently assigned to James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley).

DATES: Comments must be postmarked on or before August 15, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to (HDUNN/FGIS/USDA). Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 1, 1991, **Federal Register** (56 FR 19979), the Service asked persons interested in providing official services within portions of Indiana, Kentucky, and Tennessee to submit an application for designation. Applications were to be postmarked by May 31, 1991. Ohio Valley Grain Inspection, Inc., the only applicant, applied for the entire available area.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1991.

J. T. Abshier

Director, Compliance Division

[FR Doc. 91–15459 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Currently Assigned to the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. The Service announces that the designations of the Minnesota Department of Agriculture (Minnesota) and the Mississippi Department of Agriculture and Commerce (Mississippi) will terminate, according to the Act, and requests applications from persons interested in designation to provide official services in the specified geographic areas.

DATES: Applications must be postmarked on or before July 31, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

The Service designated Minnesota, located at 316 Grain Exchange Building, Minneapolis, MN 55415, and Mississippi, located at P.O. Box 670, Pascagoula, MS 39567, to provide official inspection and Class X or Class Y weighing services under the Act on January 1, 1988.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The designations of Minnesota and Mississippi terminate on December 31, 1991.

The geographic area presently assigned to Minnesota, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Minnesota, except those export port locations within the State.

The geographic area presently assigned to Mississippi, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Mississippi, except those export port locations within the State.

Interested persons, including Minnesota and Mississippi, are hereby given the opportunity to apply for designation to provide official inspection and Class X or Class Y weighing services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1992, and ending December 31, 1994. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1991.

J. T. Abshier

Director, Compliance Division

[FR Doc. 91-15460 Filed 6-28-91; 8:45 am]

BILLING CODE 3410-EN-F

Jamestown (ND) Agency Designation Renewal

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: The Service announces the designation of Grain Inspection, Inc. (Jamestown) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: August 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the February 6 1991, **Federal Register** (56 FR 4787), the Service announced that the designation of Jamestown terminates on July 31, 1991, and asked persons interested in providing the official services within the specified geographic area to submit an application for designation. Applications were to be postmarked by March 8, 1991.

Jamestown, the only applicant, applied for the entire area currently assigned to them.

The Service named and requested comments on the applicant for designation in the April 2, 1991, **Federal Register** (56 FR 13448). Comments were to be postmarked by May 17, 1991. The Service received one favorable comment by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Jamestown is able to provide official services in the geographic area for which they applied.

Effective August 1, 1991, and terminating July 31, 1994, Jamestown is designated to provide official inspection services in the above specified geographic area.

Interested persons may obtain official services by contacting Jamestown at 701-252-1290.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 21, 1991.

J. T. Abshier

Director, Compliance Division

[FR Doc. 91-15462 Filed 6-28-91; 8:45 am]

BILLING CODE 3410-EN-F

Foreign Agricultural Service

Import Limitation; Country of Origin Ouota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain condensed milk from Denmark.

SUMMARY: This notice adjusts the country of origin for the quota quantity of condensed milk in airtight containers assigned to Denmark.

EFFECTIVE DATE: July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Quota Manager, Import Policies and Trade Analysis Division, Foreign Agricultural Service, Room 5531 South Building, Department of Agriculture, Washington, DC 20250-1000 or telephone at (202) 447-2916.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under

Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not restrict the ability of importers to import this quota article, but only permits the unused quota quantity of the article allocated to Denmark to be imported from other countries. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

Notice

Subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Note 3(a)(iii) of subchapter IV of chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that the quantity of condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark will be entered from that country during calendar year 1991.

Notice is hereby given that the 1991 unused quota quantity for condensed milk in airtight containers specified in HTS subheading 9904.10.06 for Denmark may be imported from Australia, Canada, Denmark and the Netherlands for the remainder of the 1991 quota year.

This quota quantity for HTS subheading 9904.10.06 will revert to the original supplying country on January 1, 1992.

Issued at Washington, DC this 25th day of 1991.

Duane Acker,

Administrator.

[FR Doc. 91–15569 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

Designation of Counties Where the Great Plains Conservation Program Is Specifically Applicable

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice.

SUMMARY: For the purpose of making contracts based upon an approved plan of farming operations pursuant to the Act of August 7, 1956 (70 Stat. 1115, 16 U.S.C. 590p(b)), as amended, the following counties in the following states are designated as susceptible to serious wind erosion by reason of their soil types, terrain, and climatic and other factors.

MONTANA—Beaverhead, Gallatin, Jefferson, Madison, Park, Silver Bow
NEW MEXICO—Bernalillo, Cibola, Dona Ana, Luna, Rio Arriba, Sandoval, Sierra, Valencia
NEBRASKA—Fillmore, Jefferson, Saline, York
NORTH DAKOTA—Barnes, Cass, Cavalier, Griggs, Nelsen, Ramsey, Ransom, Richland, Sargent, Towner
OKLAHOMA—Pawnee
TEXAS—Bee, Brooks, Comal, Cooke, De Witt, Goliad, Jim Wells, Karnes, Wilson

DATES: This notice becomes effective July 1, 1991.

ADDRESSES: Peter M. Tidd, Director, Land Treatment Program Division, U.S. Department of Agriculture, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

For further information, contact Peter M. Tidd or Billy F. Mozingo, Great Plains Conservation Program Manager, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013. Phone: (202) 382–1870.

SUPPLEMENTARY INFORMATION: Public Law 84–1021, 70 stat 1115, 16 U.S.C. 590p(b), as amended, created the Great Plains Conservation Program for use in specific counties in the 10 states. The list of eligible counties has been expanded six times to include counties that exhibit erosion and climate problems targeted by the original law and amendments. Counties were added in 1958, 1962, twice in 1963, 1977, and the last time in 1980, which brought the total to 518 counties.

This action is being taken after consideration of numerous requests from conservation districts. Each county being added is a result of those requests.

The determination has been made pursuant to the provisions of Executive Order 12291 that the preparation of a regulatory impact analysis is not required. The action is not considered major under Executive Order 12291.

It has also been determined, pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–534), that the action does not have a significant economic imapct on a substantial number of small entities.

Dated: June 21, 1991.

William Richards,

Chief.

[FR Doc. 91–15521 Filed 6–28–91; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 1,1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–8922.

Preliminary Results of Review

Background

On January 12, 1987, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 1212) an antidumping duty order on brass sheet and strip from Canada.

Two manufacturers/exporters, Ratcliffs/Severn Limited (Ratcliffs) and Arrowhead Metals Limited (Arrowhead), requested, in accordance with 19 CFR 353.22(a), that the Department conduct an administrative review for the period January 1 through December 31, 1989. We published a notice of initiation on February 28, 1990 (55 FR 7015). On June 29, 1990, Arrowhead withdrew its request for a review. On September 28, 1990, the Department published a notice terminating the administrative review of Arrowhead (55 FR 39682). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We issued a sales questionnaire to Ratcliffs on February 12, 1990. In

addition, after receiving an adequate allegation from petitioner that home market sales are priced below Ratcliffs' cost of production (COP), we issued a COP questionnaire on January 24, 1991.

Ratcliffs' response to our sales questionnaire was submitted on April 30, 1990. We issued a deficiency letter to Ratcliffs on August 8, 1990, and received Ratcliffs' response to that letter on August 24, 1990. Ratcliffs' response to our COP questionnaire was submitted on March 8, 1991. We issued a deficiency letter regarding the COP response on May 1, 1991, and received Ratcliffs' response to the COP deficiency letter on May 15, 1991.

The Department conducted verification of Ratcliffs' questionnaire responses from May 28 through May 31, 1991.

Scope of Review

Imports covered by the review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Canada. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C2000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this order. During the review period, such merchandise was classified under subheadings 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

This review covers the period January 1 through December 31, 1989.

Fair Value Comparisons

To determine whether Ratcliffs' sales of brass sheet and strip were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, as defined in section 772 of the Act, because Ratcliffs sold the subject merchandise to unrelated purchasers before its importation into the United States and because exporter's sales price methodology was not indicated by other circumstances. Purchase price was based on the C&F, packed price to unrelated customers in the United States. In accordance with 19 CFR 353.41(d)(2)(i), we made deductions for cash discounts, as well as for charges incurred for brokerage, foreign inland freight, U.S. freight and U.S. duty.

Foreign Market Value

As a result of petitioners, allegation, we gathered and analyzed data on Ratcliffs' production costs for this review.

Ratcliffs reported its COP data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the period of review (POR), which coincides with Ratcliffs' fiscal reporting year. We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted the submitted costs to exclude metals holding gains calculated by Ratcliffs;

(2) We calculated interest expenses based on the actual interest expenses reported in the consolidated financial statements;

(3) We increased general and administrative costs to account for certain legal fees and a management fee paid to the parent company which Ratcliffs had not included in its calculations; and

(4) We further increased general and administrative costs to adjust for foreign exchange gains and excess interest income which Ratcliffs had improperly used to lower those costs.

In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales (1) were made in substantial quantities over an extended period of time and (2) were at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In general, when less than 10 percent of home market sales are at prices below the COP, we do not disregard any below-cost sales in our calculation of FMV because we determine that the below-cost sales are not made in substantial quantities. When between 10 and 90 percent of respondent's sales are at prices below the COP, we disregard the below-cost home market sales in our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of a respondent's home market sales are at prices below the COP and occur over an extended period of time, we determine that there are an insufficient number of sales to serve as the basis for calculating FMV and we base FMV on constructed value for all U.S. sales.

In this review, we found that below-cost sales were made in substantial quantities because more than 10 percent but less than 90 percent of Ratcliffs' sales of the subject merchandise in Canada were made at prices below the COP. We further determined that the below-cost sales were made over an extended time period (in this case in every month of the POR). Finally, Ratcliffs has provided no information that would lead us to conclude that its below-cost home market sales would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we disregarded all sales that were made at prices below the COP.

We based FMV on home market prices of the remaining contemporaneous, above-cost home market sales. Product comparisons were made using, in descending order of importance, the following characteristics: form; alloy content; gauge; width; and temper.

Ratcliffs argued that U.S. sales should be compared to home market sales at the same "level of trade." However, what Ratcliffs referred to as customers at different levels of trade were in fact customers at the same level of trade with differing purchasing requirements. Further, we found at verification that the actual basis for Ratcliffs' customer categorization (*i.e.*, Ratcliffs' perception of what a customer's annual brass and copper strip requirements would be, regardless of supplier) is different from the basis that Ratcliffs reported in its response (*i.e.*, the annual volume of brass mill products that the customer would purchase from Ratcliffs). For the first two of Ratcliffs' customer categories, we saw no correlation between price and quantity of brass mill products that customers in each category purchased from Ratcliffs. Accordingly, for purposes of the preliminary results, we have rejected Ratcliffs' claim for these categories. For the third category, which exists only in the home market, we did note a correlation between price and quantity. Rather than granting Ratcliffs' request that we make a level of trade adjustment when comparing U.S. sales to home market sales in this category, we excluded category three home market sales from our analysis since these sales were not of comparable quantities to the U.S. sales.

We based home market prices on packed, ex-factory prices to unrelated purchasers. We made deductions for rebates and cash discounts, as well as charges incurred for inland freight. In accordance with 19 CFR 353.56(a), we

made a circumstance of sale adjustment for differences in credit expenses. We recalculated both U.S. and home market credit because respondent used a discount-inclusive, rather than a discount-net, credit base in its calculation.

In accordance with 19 CFR 353.46(a), we deducted home market packing expenses and added U.S. packing expenses. At verification, we noted that Ratcliffs had overstated expenses for one type of packing. Because Ratcliffs did not report in its database the packing form for each sale, we decreased home market packing expenses for all home market sales as best information available based on the verified information.

Finally, in those instances in which there were no identical products in the home market with which to compare products sold to the United States, we made adjustments for differences in merchandise, in accordance with 19 CFR 353.57. These adjustments were based on the differences in costs of direct material, direct labor, and variable factory overhead.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the period January 1 through December 31, 1989:

Manufacturer/exporter	Margin (percent)
Ratcliffs	0.24

In accordance with 19 CFR 353.6, the Department normally considers margins of less than 0.5 percent to be *de minimis*.

The Department will issue appraisement instructions concerning Ratcliffs and all other companies directly to the Customs Service upon completion of this administrative review.

Further, except as noted below, the post-POR deposit rate for Ratcliffs or any other producer or exporter of Canadian brass sheet and strip will be that established in the final results of this administrative review. Any deposit requirements will be effective upon publication of final results of the administrative review for all shipments of brass sheet and strip from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act. Those producers or exporters that have previously been reviewed and have been given a company-specific cash deposit rate will remain subject to the rate published in the final results of that administrative review.

Deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than July 26, 1991, and rebuttal briefs no later than 12 noon on July 30, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such hearing will be held on August 1, 1991, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

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 19 CFR 353.22(c)(5).

Dated: June 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–15609 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–DS–M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce "the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our last quarterly update to the annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: June 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] Subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments	42.1¢/lb.	42.1¢/lb.
Canada	Export Assistance on Certain Types of Cheese	30.2¢/lb.	30.2¢/lb.
Denmark	EC Restitution Payments	53.9¢/lb.	53.9¢/lb.
Finland	Export Subsidy	185.2¢/lb.	185.2¢/lb.
France	EC Restitution Payments	48.1¢/lb.	48.1¢/lb.
Greece	EC Restitution Payments	61.1¢/lb.	61.1¢/lb.
Ireland	EC Restitution Payments	56.6¢/lb.	56.6¢/lb.
Italy	EC Restitution Payments	68.8¢/lb.	68.8¢/lb.
Luxembourg	EC Restitution Payments	42.1¢/lb.	42.1¢/lb.
Netherlands	EC Restitution Payments	45.1¢/lb.	45.1¢/lb.
Norway	.Indirect (Milk) Subsidy	18.6¢/lb.	18.6¢/lb.
	Consumer Subsidy	41.4¢/lb.	41.4¢/lb.
		60.1¢/lb.	60.1¢/lb.
Portugal	EC Restitution Payments	41.9¢/lb.	41.9¢/lb.
Spain	EC Restitution Payments	46.3¢/lb.	46.3¢/lb.
Switzerland	Deficiency Payments	101.6¢/lb.	101.6¢/lb.
U.K.	EC Restitution Payments	40.9¢/lb.	40.9¢/lb.
W. Germany	EC Restitution Payments	58.6¢/lb.	58.6¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 91-15610 Filed 6-28-91; 8:45 am]
BILLING CODE 3510-DS-M

[C-538-801]

Final Negative Countervailing Duty Determination: Shop Towels from Bangladesh

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kristal Eldredge, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0631.

Final Determination

Case History

Since publication of our preliminary determination in the **Federal Register** (56 FR 15330, April 16, 1991) (Preliminary Determination), the following events have occurred. We conducted verification in Bangladesh of the questionnaire responses of the Government of the People's Republic of Bangladesh (GOB), Sonar Cotton Mills (Bangladesh), Ltd. (Sonar), Eagle Star Textile Mills, Ltd. (Eagle Star), Greyfab (Bangladesh), Ltd. (Greyfab), Khaled Textile Mills, Ltd. (Khaled), and Shabnam Textiles (Shabnam) from April 21, 1991 through May 2, 1991. Case briefs were filed by petitioner and respondents on June 4, 1991, and rebuttal briefs were filed by both parties on June 10, 1991. A public hearing was held on June 12, 1991, at the request of petitioner.

Scope of Investigation

The products covered by this investigation are shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are primarily used for wiping machine parts and cleaning ink, grease, oil, or other unwanted substances from machinery or other items in industrial or commercial settings. Shop towels are currently provided for in subheadings 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Analysis of Programs

For purposes of this investigation, the period for which we are measuring bounties or grants ("the review period") is calendar year 1990, which corresponds to the most recently completed fiscal year of the majority of the respondent companies. The other respondent companies each have different fiscal years which overlap this period. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from petitioner and respondents, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Bangladesh of shop towels under the following programs:

A. Concessional Export Credit Financing

Under Number One, Parts (i) and (ii) of the "Export Policy 1989-1991," the GOB provides concessional interest rates on export financing for non-traditional exports. Shop towels are considered a non-traditional export and, therefore, shop towel producers are eligible for this financing.

The Banking Control Department (BCD) of Bangladesh Bank, the central bank of Bangladesh, sets interest rate bands for all types of financing. There are eleven interest rate bands. There are three loan categories that may apply to the shop towel industry. These are (1) Large- and Medium-Scale Industry, (2) Working Capital (Other than Jute), and (3) Other Exports.

To utilize this program, a shop towel producer applies for a loan from a commercial bank and specifies that the loan will be used for the export of shop towels. If the commercial bank decides to make the loan, it is made within the band of interest rates for "Other Exports". We verified that the band for other exports during the review period was 8 percent to 11 percent. BCD Circular Number 40 of December 9, 1990, changed this band to 8.5 percent to 11.5 percent. The Bangladesh Bank then compensates the lending bank for the difference between the band of interest rates charged to shop towel exporters

and the band of interest rates charged for other short-term commercial loans.

We verified that only one company, Shabnam, received a loan under this program on which interest was paid during the review period. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

As the benchmark for short-term (less than one-year) loans, it is our practice to use the average interest rate for an alternative source of short-term financing in the country in question. In determining this benchmark, we will normally rely upon the predominant source of short-term financing.

As previously stated, in Bangladesh, bands of interest rates are established by the BCD of Bangladesh Bank. We verified that the band of interest rates on short-term commercial loans is 12 percent to 20 percent per annum. We verified that during the review period, the average interest rate applicable to the predominant source of short-term commercial financing was 18 percent. We, therefore, selected 18 percent as our benchmark rate.

Comparing the benchmark rate to the rate charged on the loan made under this program during the review period, we find that this loan is preferential and, therefore, confers a bounty or grant on exports of shop towels.

To calculate the benefit from the loan made under this program on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 18006, April 26, 1984; see also, *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985). Accordingly, we compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate of 18 percent.

We verified that Shabnam exports the subject merchandise only to the United States, and therefore, we divided the total interest savings by the value of Shabnam's exports of the subject merchandise to the United States during the review period to obtain the company's *ad valorem* rate. We then weight-averaged the individual benefit by each company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit to be 0.02 percent *ad valorem*.

Furthermore, the GOB formerly provided an additional two percent incentive on interest rates when exporters of non-traditional goods exceeded export earning targets established on the basis of previous year earnings. We verified that this aspect of the program was discontinued under BCD Circular Number 33 of November 16, 1989.

B. Income Tax Holiday

Under section 45 of the Income Tax Ordinance, 1984, the GOB provides a tax holiday for industrial undertakings provided that certain conditions are met. All producers in Bangladesh who create a new manufacturing operation which will in turn create jobs are eligible for an exemption from income taxes. However, the number of years a company may benefit from this program differs by region. Under the current statute, there is a five-year exemption in developed areas; a seven-year exemption in less developed areas; and a nine-year exemption in the least developed areas. Industrial undertakings in an Export Processing Zone (EPZ) are eligible for a ten-year exemption from taxes beginning with the first month the business commences. After ten years, the income tax holiday is converted into a 50 percent tax rebate on export sales. Companies located in the Hill Tracts are eligible for a twelve-year tax holiday.

We verified that the availability of the five-year tax holiday is not dependent on the exportation of merchandise. Furthermore, we verified that this tax holiday is not limited to an enterprise or industry or group of enterprises or industries. However, as previously stated, the number of years a company may receive benefits from this program is based on the region in which it is located.

Therefore, we determine that this program confers a bounty or grant to the extent that shop towel producers located in a lesser developed area, least developed area, in an EPZ, or in the Hill Tracts are allowed a longer income tax holiday than producers located in a more developed region.

We verified that Sonar, Greyfab, Khaled, and Shabnam received income tax holidays during the review period. Because Sonar and Greyfab are located in the Chittagong EPZ, they are eligible for a ten-year exemption, while Khaled and Shabnam are eligible for a seven-year exemption because they are located in a lesser developed region.

To determine whether countervailable benefits were provided under this program during the review period, we used the five-year tax holiday as our "benchmark". Any additional years of income tax holiday beyond this benchmark would, therefore, confer a countervailable benefit. Because (1) the companies under investigation who are eligible for an income tax holiday have been eligible for such benefits for fewer than five years and (2) the companies do not have taxable income during the review period, we determine that the income tax holiday did not confer a benefit during the review period.

C. Export Performance Benefit

In Bangladesh, there is a multiple exchange rate system made up of two legally recognized rates: the official exchange rate, which is set by the GOB, and the Secondary Exchange Market (SEM) rate, which is determined by a committee of authorized dealers and approved by the GOB. A third rate, the flow rate, also exists, but is not used for commercial transactions.

The objective of this system was to encourage Bangladeshi workers abroad to exchange their earnings through official channels. Previously, a large portion of the earnings of workers abroad was exchanged through a black market. The GOB created the SEM rate to discourage the use of a black market rate.

Under this multiple exchange rate system, most exporters are required to convert their export earnings at the less favorable official rate. According to the GOB, because exporters frequently complained about this system, the Export Performance Benefit Scheme (XPB) was created to compensate the exporters for their losses. Under Number Four of the "Export Policy 1989–1991," the GOB allows exporters of non-traditional products to receive a remittance calculated as a portion of the difference between the official rate and the SEM rate (the rate at which most imports are purchased). The authorized dealer pays out the XPB premium and then seeks reimbursement of the XPB from the Bangladesh Bank. Exporters located in an EPZ may maintain a portion of their earnings in a dollar account and exchange the remainder of their export earnings at the SEM rate. Therefore, exporters located in an EPZ are not eligible for XPB.

Depending on the amount of domestic value or content in the exported product, exporters are entitled to a 100 percent, 70 percent, or 40 percent XPB. A 100 percent entitlement means that the exporter can receive 100 percent of the difference between the official and SEM rates, in effect, granting the SEM rate. The 70 percent and 40 percent

entitlements similarly mean that the exporter can receive 70 percent or 40 percent of the difference between the two rates.

We verified that Eagle Star, Khaled, and Shabnam received XPB during the review period. Eagle Star is entitled to a 70 percent XPB, while Khaled and Shabnam are entitled to a 100 percent XPB. Because all exporters who are eligible for XPB are required to convert their export earnings at the less favorable official exchange rate while most imports are purchased at the SEM, the XPB is designed to mitigate the exporter's losses by covering some or all of the disparity in the two rates. For example, when exporters go to an authorized dealer to exchange their export earnings from dollars to takas (the Bangladeshi currency), they will have to exchange at the less favorable official rate and, therefore, receive fewer takas per dollar than if they had been able to exchange at the SEM rate. Conversely, importers exchange their takas for dollars using the SEM rate and, therefore, must give the authorized dealer more takas per dollar than they would receive as exporters. Thus, this program allows exporters to receive a remittance equal to the difference between the two rates.

However, during verification, we noted that one company, Shabnam, applied for XPB twice for the same shipments, once at a 100 percent entitlement and once at a 70 percent entitlement. Therefore, for some transactions, the company received 170 percent entitlement. While we verified with the GOB that no company is supposed to receive more than 100 percent entitlement, this company received an overpayment and therefore, received more than needed to equalize the losses resulting from the exchange rate differences.

Furthermore, we noted on verification that the commercial banks do not consistently apply the official and SEM exchange rates when applying them to import and export transactions. We verified that the companies applied for XPB at the rate of either .61 taka per dollar, .62 taka per dollar, or .58 taka per dollar, which reflects the difference between the official and SEM rates. However, when the commercial banks actually posted export and import transactions to the companies' accounts they generally used rates with a smaller difference between them. Therefore, the difference between the claimed XPB and the exchange rate differential actually used by the commercial banks also results in an overpayment to the companies.

We determine that this program provides a countervailable benefit to the companies to the extent that it provides an overpayment of XPB beyond what should have been paid to equalize the exporter's exchange rates for imports and exports.

We calculated the benefit by calculating the average difference between the XPB rate applied for and received by each company and the average difference between the two rates actually received by the companies. We multiplied this result by each company's total FOB amount to get the amount overpaid. We added to this overpayment any overpayment attributable to double claims.

We verified that the payments received by Eagle Star, Shabnam, and Khaled were only based on the companies, exports of the subject merchandise to the United States, and therefore, divided the result by the value of exports of the subject merchandise to the United States during the review period to obtain each company's *ad valorem* rate. We then weight-averaged the individual benefit by each company's share of total exports of the subject merchandise to the U.S. On this basis, we determine the benefit to be 0.14 percent *ad valorem.*

D. GOB Equity Infusion Converted Into An Interest-Free Loan

During verification, we noted an entry in Eagle Star's financial statement regarding a GOB equity converted loan. We verified the following information with respect to this loan. On March 26, 1972, Eagle Star was nationalized by the GOB. On June 30, 1983, when the government still owned the company, it made a capital investment of 781,000 taka into the company. The GOB returned the company to its original owners under an agreement dated June 1, 1985.

One of the terms of the agreement was that the original owners became responsible for any contracts, loans, or any other liabilities undertaken by the GOB while the company was under its control. In addition, the original owners of the company had to repay to the government the amount of capital investment made by the government into the company. The agreement specifies that the capital investment of 781,000 taka would be treated as a loan to the company to be paid within nine years, at an interest rate determined by the government. No interest was charged to the company.

We verified that receipt of this loan was not dependent on the exportation of merchandise. Furthermore, there is no evidence that this type of loan is not limited to a specific industry or enterprise or group of industries or enterprises. Therefore, we determine that it is countervailable to the extent that it was made on terms inconsistent with commercial considerations.

In the absence of information on long-term commercial interest rates in Bangladesh, we used as our benchmark the same benchmark discussed under the Concessional Export Credit Financing section of this notice (*i.e.*, 18 percent). Comparing the benchmark rate to the rate charged on the loan (0 percent), we find that this loan was made on terms inconsistent with commercial considerations and, therefore, confers a bounty or grant on exports of the subject merchandise.

To calculate the benefit from the loan we followed the short-term loan methodology fully described in the Concessional Export Credit Financing section of this notice. We divided the total interest savings by the total value of Eagle Star's sales during the review period to obtain the company's *ad valorem* rate. We then weight-averaged the individual benefit by exports of the subject merchandise to the United States. On this basis, we determine the benefit to be 0.01 percent *ad valorem.*

II. Program Determined Not To Confer a Bounty or Grant

Based on the responses and verification, we determine that bounties or grants are not being provided to manufacturers, producers, and exporters in Bangladesh under the following program:

Concessional Duty Treatment Under the Indigenous Raw Materials Provision of S.R.O. 282

Under Number Six, Part (i) of the "Export Policy 1989–1991," the GOB offers industries concessional import duties on capital machinery. This program, administered by the Ministry of Finance, is designed to help industries modernize or improve their plant facilities. In the first half of the review period, the duty rates on capital machinery varied between 2.5 percent and 15 percent. Statutory Rules and Orders, dated July 25, 1990 (S.R.O. 282/L.1318/Cus.), revised the rate of duty to ten percent.

There are two separate provisions under S.R.O. 282 which allow a company to receive concessional duty treatment. These two provisions cover (1) industries which export 70 percent or more of their production or (2) industries which use a minimum of 70 percent indigenous raw materials. Under either of these provisions, an industry is

entitled to a total rebate of 7.5 percent of the ten percent duties paid at the time of importation.

We verified that concessional duty treatment under the indigenous raw material provision is open to a large number and wide variety of industries. We verified that the industries eligible for concessional duty treatment under this provision are based on a list compiled by the Ministry of Textiles and the Ministry of Industries and contains any industry they believed was capable of using at least 70 percent local raw materials. If an industry is not currently on the list and the company can show that it meets the threshold requirement, it too may receive concessional duty treatment.

Because receipt of concessional duty treatment under the indigenous raw material provision of S.R.O. 282: (1) is not contingent upon export performance and (2) is not limited to an enterprise or industry or group of enterprises or industries, we determine that this provision does not confer a bounty or grant on manufacturers, producers, or exporters in Bangladesh.

III. Programs Determined Not To Be Used

Based on the responses and verification we determine that manufacturers, producers, or exporters in Bangladesh of shop towels did not apply for, claim or receive benefits during the review period for exports of shop towels to the United States under the following programs:

A. Concessional Duty Treatment Under the Export Provision of S.R.O. 282
B. Income Tax Rebates Under Number Seven of the "Export Policy 1989–1991"
C. Cash Assistance for Exports Under Number 13 of the "Export Policy 1989–1991"
D. Import Duty Exemption For Companies Located in an Export Processing Zone

IV. Program Determined Not to Exist

Based on the responses and verification, we determine that the following program does not exist:

Rebates on Insurance Premiums

Number Eight of the "Export Policy 1989–1991" provides for rebates on insurance premiums. However, we verified that this program has never been put into effect. Sadharan Bima Corporation, the state-owned general insurance corporation, never issued an order or circular putting this program into effect.

The total *ad valorem* benefits received by Bangladeshi manufacturers, producers, and exporters of shop towels equals 0.17 percent. This amount is *de minimis* and, pursuant to 19 CFR 355.7, we determine that exports of shop towels from Bangladesh are not receiving benefits which constitute countervailable bounties or grants.

Comments

Comment 1

Petitioner argues that the provision of duty-free importation of machinery, equipment, and raw materials to companies located in the EPZ is a countervailable bounty or grant benefitting Sonar. Specifically, petitioner asserts that although the machinery imported by Sonar in 1990 was and remains inoperable, the company received a countervailable benefit because it was not required to pay import duties on this machinery. Further, the company imported yarn free of duty due to its location in the zone and, therefore, received a countervailable benefit.

Respondents argue that although Sonar did import machinery in 1990 free of duty, the machinery was defective when imported and remains inoperative and, therefore, the company did not receive a competitive and commercial benefit. Further, respondents stated that they have refused to pay for the machinery and have been engaged in negotiations with the supplier concerning the disposition of the machinery which may include its return or replacement. They further assert that there is no benefit through the duty-free importation of raw materials into the EPZ because the entire zone acts as a bonded warehouse in which the raw materials are incorporated in the finished product and re-exported.

DOC Position

With respect to raw materials which are physically incorporated into the exported product, we agree with respondents that no benefit arises. This is because duty-free importation of these materials is equivalent to duty drawback, which does not confer a bounty or grant.

With respect to the duty-free importation of machinery, we have determined that the facts in this case raise an issue of first impression. In the instant case, the imported machinery was defective, and we verified that the machinery had not been used in production of any kind, including production of the subject merchandise. Indeed, there is nothing that would lead us to conclude that the machinery will ever be used in production.

But for the complicating factor of the well-publicized hurricane, which may make it difficult to prove to the supplier (or any tribunal resolving a contractual dispute between the supplier and the importer) that the machinery was defective on delivery, it is reasonable to assume that the machinery would have been returned to and/or replaced by the company that manufactured it. If the machinery had been returned, then there would clearly be no benefit arising from the duty-free importation of the machinery. If it had been replaced, then the benefit would arise from the duty-free treatment of the replacement machine, not from the fact that duties were not paid on a machine that was not, and could not be used to produce the subject merchandise.

Consequently, we are faced with a situation in which no use whatsoever has been made of the equipment the purchase of which was allegedly subsidized, and further, that there is reason to believe the machinery will be re-exported. Thus, in effect, the firm is no better off than if it had never purchased the machinery at all. Under these circumstances, we determine there to be no countervailable benefit.

Comment 2

Petitioner argues that the allowance of foreign currency accounts used for the purchase of imported raw materials by companies located in the EPZ provides a countervailable benefit because importers are not required to use the official exchange rate, as they would normally be required to do, and this results in a savings to the companies. Petitioner cites the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from Thailand, 52 FR 36987 (October 2, 1987) *(Thai Nails)* in support of its argument.

Respondents argue that Sonar and Greyfab do not receive any benefit merely from being able to purchase imports using foreign currency accounts. They assert that holding foreign currency accounts (dollar accounts) is the same as an exporter, not located in the zone, receiving 100 percent XPB. Also, respondents assert that petitioner's citation to *Thai Nails* in support of their assertion that holding foreign currency accounts provides a countervailable benefit does not apply.

DOC Position

We disagree that the ability to hold dollar accounts provides a countervailable benefit to the companies located in the EPZ.

Companies located in the EPZ pay for their imports directly from their dollar accounts and therefore incur no

exchange rate losses. However, the XPB program, which is designed to return to companies outside the EPZ the difference between the official and SEM exchange rates, also effectively eliminates any exchange rate losses. We have determined that there is no countervailable benefit provided under the XPB program when the reimbursement by the GOB equals the difference between the two rates. (See, the Department's Preliminary Determination). Although the Department has found the XPB program to be countervailable for purposes of this final determination, the basis of that finding is rooted exclusively in the manner in which the program was administered. Had the program been administered as designed, we would not have identified any countervailable benefit.

Because this program and the XPB counteract the differences in the applicable exchange rates for converting export proceeds and for converting currency for purchasing imports, there are no savings attributable to the holding of dollar accounts to those companies located in the EPZ.

Further, petitioner's reliance upon *Thai Nails* is inappropriate because in that case foreign currency accounts were determined not to be used.

Comment 3

Petitioner argues that because Sonar and Greyfab are allowed to convert their export earnings at the higher SEM rate, they receive a countervailable benefit.

Respondents argue that these companies do not receive a countervailable benefit merely because they are eligible to convert a portion of their export earnings at the SEM rate. They assert that the conversion of export earnings at the SEM rate is essentially the same as an exporter receiving 100 percent XPB. Further, the portion of their export earnings which is converted into local currency is used to pay for local expenses.

DOC Position

We agree with respondents that the eligibility of a company to convert its export earnings at the SEM rate is equivalent to receiving a 100 percent XPB entitlement. The receipt of 100 percent XPB, when it is properly applied for and received, does not constitute a benefit (see, the Department's Preliminary Determination). Therefore, a program that essentially provides the same entitlement does not constitute a countervailable bounty or grant.

Comment 4

Petitioner argues that the interest-free loan to repay a prior GOB investment in Eagle Star is inconsistent with commercial considerations under 19 U.S.C. 1677(5)(A) and, therefore, confers a countervailable bounty or grant.

Respondents argue that this interest-free loan did not provide a countervailable benefit to Eagle Star. They assert that: (1) Thousands of companies were nationalized by the government and subsequently returned to private ownership under similar forced conditions; (2) the companies had no choice but to accept the terms laid down by the government; and (3) several years of repairs, maintenance, and expansion were necessary after the company was returned to private ownership. All of these factors show that the government "investment" conferred no real benefit.

DOC Position

There is nothing on the record to support respondents' contention that "thousand of companies were nationalized by the government and subsequently returned to private ownership under similar forced conditions." Therefore, we determine that this loan is limited to a specific enterprise or industry or group of enterprises or industries. We further agree with petitioner that the loan was made on terms inconsistent with commercial considerations.

Comment 5

Petitioner argues that Eagle Star's receipt of concessional duty treatment for importation of machinery provides a countervailable benefit. They assert that because Eagle Star qualifies for eligibility for concessional duty treatment under both the indigenous raw material provision and the level of exports provision of S.R.O. 282, it may have received the concessional duty treatment for attaining the required level of exports rather than by reason of using a given amount of indigenous raw materials. They further argue that the machinery receiving concessional duty treatment is used to make gray fabrics, a major input for shop towels and, therefore, this provision should be considered an upstream subsidy under 19 U.S.C. 1677–1.

Respondents argue that Eagle Star could only receive concessional duty treatment under the indigenous raw material provision of S.R.O. 282 because the company did not export 70 percent or more of its products during the review period.

DOC Position

The Department agrees with respondents. An analysis of the sales figures contained in our verification report demonstrates that the company did not meet the export requirement for concessional duty treatment. Moreover, even if the company had met the requirement for receipt of concessional duty treatment on the basis of export levels, the machinery in question was imported in 1988. It is the Department's practice that recurring benefits are to be expensed in the year of receipt (*i.e.*, 1988). Therefore, the issue would in any case be moot.

Comment 6

Petitioner argues that Shabnam's receipt of a low interest loan under concessional export credit financing is inconsistent with commercial considerations and, therefore, provides a countervailable benefit. They further assert that the benchmark rate should be 18 percent.

Respondents argue that because the bank required the company to pay various other charges, such as a watchman's salary, the effective interest rate is actually higher than nine percent.

DOC Position

We agree with petitioner. We verified that the most common nominal interest rate on short-term commercial financing is 18 percent. Furthermore, it was confirmed that any additional charges levied on the loan would be applied to every loan, whether concessional or not. Therefore, if an effective interest rate comparison was performed, the effect of the additional charges on concessional and commercial loans would cancel each other out.

Comment 7

Petitioner argues that the receipt of low-interest packing credits to cover freight expenses provides a countervailable benefit to Khaled.

DOC Position

We verified that the packing credits received by Khaled were at a commercial interest rate and, therefore, were not preferential.

Comment 8

Petitioner argues that the receipt of double XPB payments by Khaled constitutes a countervailable benefit.

Respondents contend that a countervailable benefit cannot be unwittingly furnished by a government where participants in an otherwise non-countervailable program unintentionally or inadvertently obtain through

improper application more than they were entitled to under the program.

DOC Position

We agree with petitioner. Although the program is not designed to provide double benefits, Khaled's exports did benefit from extra payments. Therefore, we find the overpayment of XPB to Khaled to be a countervailable benefit.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, examination of original source documents and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the verification reports, which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Suspension of Liquidation

Due to the fact that the estimated net bounty or grant rate is *de minimis*, we are not directing the U.S. Customs Service to suspend liquidation on entries of shop towels from Bangladesh.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: June 24, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-15611 Filed 6-28-91; 8:45 am]

BILLING CODE 3510-DS-M

Standard Pipe and Line Pipe From Argentina; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On February 1, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty orders on standard pipe and line pipe from Argentina. We have now completed those reviews and determine the total bounty or grant to be zero for both products during the period July 14, 1988 through December 31, 1988.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 4044) the preliminary results of its administrative reviews of the countervailing duty orders on standard pipe and line pipe from Argentina (53 FR 37619; September 27, 1988). The Department has now completed those administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of certain welded carbon steel pipe products from Argentina. These products constitute the following two separate "classes or kinds" of merchandise:

(1) *Standard Pipe:* Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain ends, threaded, threaded and coupled, or beveled. These products are generally produced to American Society for Testing and Materials (ASTM) specifications A-120, A-53 or A-135. During the review period, standard pipe was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065 and 7306.30.5075. Oil country tubular goods are not covered by this countervailing duty order.

(2) *Line Pipe:* Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter, known in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. During the review period, line pipe was classifiable under TSUSA item numbers 610.3208 and 610.3209, and is currently classifiable under HTS item numbers 7306.10.1010 and 7306.10.1050.

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the period July 14, 1988 through December 31, 1988 and six programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioners, the Line Pipe and Standard Pipe Subcommittees of the Committee on Pipe and Tube Imports, and from a respondent, Comatter, S.A.

Comment 1: Petitioners assert that the Department did not verify the 1988 tax incidence study submitted with the questionnaire response, but instead verified a proxy for that study, an independent calculation prepared by the Argentine Steel Industry Chamber. Thus, petitioners maintain, the information in the 1988 study contained in the questionnaire response regarding the cost structure and the indirect tax incidence on the subject merchandise remains unverified.

Department's Position: We disagree. As the verification report clearly indicates, the Department verified the 1988 tax incidence study prepared by Comatter, which appears in Attachment 10 of the questionnaire response and on which the Government of Argentina based its reembolso rebate. Pages 4-12 of the verification report contain a detailed discussion of the verification of the cost structure of the subject merchandise and of the indirect tax incidence at the final stage of production. Section 1.B of the report discusses verification of the analysis of the prior-stage tax incidence found in an independent study prepared by the Steel Industry Chamber. This study, which used publicly available data, contains a comparison of some of its results with selected information on hot-rolled coil production by a prior-stage supplier (pages 13-14 of the verification report). The information on the amounts of prior-stage tax incidence in that independent Chamber study was comparable to that

found in the Comatter study (page 15 of the verification report). Having adequately verified the prior-stage and final-stage indirect tax incidence, the Department accepted the study submitted by the Government of Argentina in the questionnaire response as a reasonable calculation of the indirect tax incidence on the subject merchandise.

Comment 2: Petitioners argue that the Steel Industry Chamber's independent study should be rejected because it constitutes new information presented for the first time at verification. The study should also be rejected because interested parties did not have an opportunity to analyze or comment upon the information, since substantial portions of the supporting documents were not brought back as verification exhibits and made part of the record. Therefore, the entire amount of indirect taxes on national raw materials used as inputs for hot-rolled coil should be considered unverified and not considered allowable for rebate under the reembolso.

Respondents point out that the Comatter study provided in Attachment 10 of the questionnaire response, and verified by the Department, provided the basis for the establishment of the reembolso rebate rate and that the Government of Argentina and the Steel Industry Chamber provided the independent study only as additional proof of the reasonableness of the Comatter study. It was, therefore, appropriate that the Government of Argentina presented the independent study at verification. Furthermore, respondents argue that, in Final Results of Countervailing Duty Administrative Review; Certain Apparel from Argentina (54 FR 22466; May 24, 1989), the Department stated that, in reviewing tax incidence studies, it was willing to accept additional information on prior-stage taxes as a means of supplementing a government study that was not fully documented. According to respondents, the Government of Argentina has satisfied these standards. Lastly, respondents point out that specific exhibits attached to the verification report contain information to document the sections of the independent study of concern to petitioners.

Department's Position: We disagree with petitioners. The independent study was presented as further corroborating evidence of the reasonableness of the information provided in the questionnaire response and was properly submitted at verification. The verification team spot-checked the information and found it to be accurately reported; key documents related to the independent study were included in the record as verification exhibits. The Department is under no obligation to bring back as verification exhibits every supporting document it has reviewed.

Comment 3: Petitioners argue that the Department erred in concluding that the reembolso rebate does not constitute an excessive rebate of indirect taxes, since many prior-stage and final-stage taxes were either unverified or were paid on inputs not physically incorporated in standard pipe and line pipe.

Accordingly, the Department should not take them into account in calculating the amount of indirect taxes allowable for rebate under the reembolso. According to petitioners, the allowable tax incidence on physically incorporated inputs into standard pipe and line pipe is lower than the reembolso rebate rate, and the Department should countervail the difference.

Respondents submit that, based on the prior-stage tax incidence on hot-rolled coil already verified by the Department in a separate proceeding, Final Results of Countervailing Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina (56 FR 28527; June 21, 1991), and the information conceded or not contested by petitioners, the total tax incidence on welded pipe exceeds the amount rebated under the reembolso.

Department's Position: We disagree with petitioners. The Department has verified and accepted the information in the Comatter study presented in Attachment 10 of the questionnaire response (see Comment 1). However, even assuming, *arguendo*, that prior-stage tax information from that study was unverified, as petitioners contend, the Department determined, using verified information contained in the record of this review, that the Argentine pipe producers received no overrebate of indirect taxes during the review period. We reached this conclusion by taking into account only the indirect taxes imposed on transactions throughout the Argentine economy (the statistics tax, the stamp tax, the capital tax, the turnover tax, the municipal taxes, and the bank debit tax) for the first and second stages of production. For the first stage of production, we added the rates of these taxes and obtained a total sum. For the second stage of production, we multiplied this sum by the percentage of national raw material content in hot-rolled coil, presented in verification exhibit VE 36. To this result, we added the same indirect tax rates as in the previous stage to obtain the indirect tax incidence on hot-rolled coil. For the final stage of production, we multiplied the indirect tax incidence on hot-rolled coil by the percentage of hot-rolled coil incorporated into pipe and tube. To this figure, we added the final-stage indirect taxes verified in pages 4–12 of the verification report. As a result, the Department finds a cumulative allowable indirect tax incidence that exceeds the amount of the reembolso rebate. Therefore, we determine that the reembolso program does not provide an overrebate of prior and final-stage indirect taxes.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be zero during the period July 14, 1988 through December 31, 1988.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 14, 1988 and exported on or before December 31, 1988.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next 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 19 CFR 355.22.

Dated: June 25, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–15612 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–DS–M

University of California, San Francisco, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S.

Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90–232. *Applicant:* University of California, San Francisco, San Francisco, CA 94143–0556. *Instrument:* Stopped-flow Spectrofluorimeter, Model SF–51 with Ratio Mixing Accessory. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 4047, February 1, 1991. *Reasons:* The foreign instrument provides: (1) dead time less than 5 ms with multiple access ports, (2) simultaneous measurement of fluorescence, light scattering and absorbance and (3) a data acquisition rate of 10 kHz per emission port. *Advice Submitted By:* National Institutes of Health, April 29, 1991.

Docket Number: 90–234. *Applicant:* U.S. Department of Agriculture, Athens, GA 30613. *Instrument:* Micro-spectrophotometry System, Model UMSP 80 UV–VIS–IR. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 4047, February 1, 1991. *Reasons:* The foreign instrument provides: (1) Spatial resolution of 0.25 μm, (2) a spectral range from 240 to 2100 nm and (3) both image and illumination monochrometers. *Advice Submitted By:* National Institutes of Health, March 25, 1991.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–15613 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–DS–M

University of Illinois, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–025. *Applicant:* University of Illinois, Urbana, IL 61801. *Instrument:* Electron Microscope for Surface Studies, Model JEM 2000EX. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Order Date:* November 15, 1990.

Docket Number: 91–028. *Applicant:* University of Pittsburgh, Pittsburgh, PA 15260. *Instrument:* Electron Microscope, Model EM 902/PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 11546, March 19, 1991. *Order Date:* October 2, 1990.

Docket Number: 91–039. *Applicant:* Wesley Medical Research Institutes, Wichita, KS 67208. *Instrument:* Electron Microscope System, Model CM10/PC with Plate Camera. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 56 FR 13625, April 3, 1991. *Order Date:* January 18, 1991.

Docket Number: 91–043. *Applicant:* Department of Veterans Affairs Medical Center, Albany, NY 12208. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi/Nissei Sangyo America, Japan. *Intended Use:* See notice at 56 FR 14929, April 12, 1991. *Order Date:* June 30, 1988.

Docket Number: 91–047. *Applicant:* Ball State University, Muncie, IN 47306. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* See notice at 56 FR 14930, April 12, 1991. *Order Date:* October 3, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–15614 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Squid, Mackerel and Butterfish Committee and its Large Pelagics Committee will meet simultaneously on July 16, 1991, at the Radisson Hotel, 700 Settlers Landing, Hampton, VA. (telephone: 804–727–9700). The Council will begin its regular meeting at the same location on July 17 at 1:30 p.m., and adjourn on July 18 at approximately 1 p.m.

The Council will possibly vote on amendment #4 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan; review National Marine Fisheries Service emergency rules for swordfish; hear committee reports; and consider other fishery management matters as deemed necessary. The Council may go into closed session (not open to the public), to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 25, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–15553 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Textile Products Produced or Manufactured in Korea

June 26, 1991.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting charges for certain textile products exported in 1990.

EFFECTIVE DATE: July 3, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust 1990 and 1991 import charges made to certain categories for non-quota merchandise exported in 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 1706, published on January 18, 1990; and 55 FR 51754, published on December 17, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1991.

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

Dear Commissioner: To facilitate implementation of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea, I request that, effective on July 3, 1991, for goods exported in 1990, you deduct the following amounts from the 1990 charges made to Categories 229 and 669–O [1] in Group I (see directive dated January 11, 1990):

Category	Amount to be deducted
229	20,155 kilograms.
669–O	555,476 kilograms.

Also, you are directed to deduct the following amounts, for goods exported in 1990, from the 1991 charges made to the following categories (see directive dated December 4, 1990). These same quantities shall be charged to the corresponding categories for 1990.

[1] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Category	Amount to be deducted/ charged
Group I	
200, 201, 218–220, 222–229, 300–326, 360–363, 369–O [a], 400, 410, 414, 464–469, 600–607, 611–629, 665–669 and 670–O [b], as a group.	1,344,524 square meters equivalent.
201	37,024 kilograms.
218	9,302 square meters.
219	63,174 square meters.
220	16,983 square meters.
222	12,797 kilograms.
224	71,988 square meters.
226	56,903 square meters.
229	19,368 kilograms.
313	451,105 square meters.
314	655,125 square meters.
315	363,073 square meters.
317	562,878 square meters.
326	97,461 square meters.
361	15 numbers.
362	280 numbers.
369–O	43,905 kilograms.
410	47,016 square meters.
611	53,116 square meters.
613	24,089 square meters.
614	4,858 square meters.
617	58,529 square meters.
619	1,045,866 square meters.
620	66,305 square meters.
624	122,718 square meters.
625	12,814 square meters.
665	19,021 square meters.
666	21,524 kilograms.
669–P [c]	45,108 kilograms.
669–O	77,541 kilograms.
670–O	3,693 kilograms.

[a] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 (Category 369–L).

[b] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[c] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

This letter will be published in the **Federal Register**.

Sincerely,
Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–15608 Filed 6–28–91; 8:45 am]

BILLING CODE 3510–DR–F

Permitting Entry of Certain Textile Products Exported from the People's Republic of China

June 27, 1991.

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

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain shipments.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on June 19, 1991 (56 FR 28142) announced that the export license/commercial invoice issued by the People's Republic of China would be printed on blue instead of green and yellow background paper for goods exported from China on and after July 1, 1991.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to permit entry of goods exported during the period July 1-31, 1991 which are accompanied by visas on the green and yellow invoice issued by the Government of the People's Republic of China prior to July 1, 1991.

Beginning July 1, 1991, the Government of the People's Republic of China will issue visas on the blue form for shipments exported on and after July 1, 1991 and for replacement visas issued in China. Replacement visas issued from the Embassy of the People's Republic of China in Washington will continue to be printed on the white form.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1991.

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

Dear Commissioner: To facilitate implementation of the export licensing system between the Governments of the United States and the People's Republic of China established in the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, I request that, effective on July 1, 1991, you permit entry of textiles and textile products, produced or manufactured in China and exported from China during the period July 1, 1991 through July 31, 1991 for which the Government of the People's Republic of China has issued either a blue, green or yellow export license/commercial invoice.

Goods exported from China on and after August 1, 1991 must be accompanied by an export visa issued by the Government of the People's Republic of China on the blue invoice form only.

Beginning July 1, 1991, replacement visas issued in China by the Government of the People's Republic of China will be on the blue form for shipments exported on and after July 1, 1991.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-15669 Filed 6-27-91; 10:30 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Request for Information About Aversive Agents

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Legislation enacted in 1990 directs the Commission to conduct a study of the feasibility of requiring the use of aversive agents in consumer products that present a hazard when ingested to deter ingestions of those products. An "aversive agent" is a substance which is added to a product with the intent of deterring or limiting its ingestion. The Commission seeks information about aversive agents which may be added to consumer products to deter ingestions of those products, particularly by young children.

DATES: The Commission desires to receive the information described in this notice by August 15, 1991.

ADDRESSES: Information submitted in response to this request should be captioned "Aversives" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6477.

SUPPLEMENTARY INFORMATION: Section 204 of the Consumer Product Safety Improvement Act of 1990 (Pub. L. 101-608, 104 Stat. 3110) directs the Commission to "conduct a study of requiring manufacturers of consumer products to include aversive agents, as appropriate, in products which present a hazard if ingested to determine the potential effectiveness of the aversive agents in deterring ingestion." An "aversive agent" is a substance which is added to a product with the intent of deterring or limiting its ingestion. The Consumer Product Safety Improvement Act of 1990 provides that the Commission shall consult with appropriate consumer, health, and business organizations and with other government agencies in conducting this study, and requires the Commission to complete the study by November 15, 1992.

In 1990, the Commission issued rules under provisions of the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*) to require child-resistant packaging of certain home permanent neutralizers containing sodium bromate or potassium bromate. See the **Federal Register** notice of December 18, 1990 (55 FR 51897). During that rulemaking proceeding, the Commission received a comment urging the Commission to allow the addition of denatonium benzoate, a bittering agent, to the products under consideration as an alternative to requiring the products to be in child-resistant packaging.

After considering information about the possiblity of using denatonium benzoate to prevent ingestions of certain home permanent neutralizers, the Commission concluded that the addition of this bittering agent may not deter young children from initially swallowing small amounts of those products and receiving a toxic amount of sodium bromate or potassium bromate. In the **Federal Register** of December 18, 1990 (55 FR 51897) the Commission issued final rules to require child-resistant packaging of the home permanent neutralizers described in the proposed rules.

Request for Information

The Commission's staff has considered information about the possible use of denatonium benzoate to prevent ingestion of certain household products in the analysis of the comment described above. The Commission solicits additional and updated information about this agent. Additionally, the Commission seeks information about other aversive agents, including odorants, colorants, and other bittering and nonbittering aversives. The Commission desires to obtain the following kinds of information about each aversive agent which might be added to consumer products to deter or limit their ingestion, particularly by young children:

- *Chemical properties.* Information concerning the chemical properties of each aversive agent will be used to evaluate aversive-product compatibility. Information is requested about solubility, and chemical, pH, light, and temperature stability of each aversive.
- *Toxicity data.* Toxicity data will be used to assess the safety of each aversive agent and the feasibility of its use. Results of acute and chronic studies measuring lethality, carcinogenicity, mutagenicity, sensitivity, and related general toxicity of each aversive agent are needed. Additionally, the Commission requests any information concerning known adverse reactions or toxicity in humans attributed to any aversive agent. The Commission also seeks information about the concentration range at which the aversive property of the agent (odor, bitterness, hotness, etc.) is detectabler by humans in order to evaluate the safety of each aversive.
- *Possible effectiveness.* To evaluate the possible effectiveness of an aversive agent to deter or limit the ingestion of hazardous products, the results of human performance testing conducted with children and adults are requested. The description of the test methodology should include: The number, sex, and age of the subjects tested; the substance to which the aversive was added; conditions under which the subject obtained the sample; the method for measuring the amount consumed; and the controls used for comparison. The Commission also requests detailed information about studies conducted to evaluate the level of detection (sensory perception) by humans of the aversive property (odor, bitterness, hotness, etc.) of the agent. Information is requested about the possible benefit of labeling to make consumers aware of the addition of an aversive agent to a product or the possible disadvantage of such labeling which could give consumers a false sense of security. Additionally, information is requested about any ingestion of any currently marketed products that contain an aversive agent.
- *Economic information.* Economic information will be used to assess the feasibility and cost effectiveness of the use of an aversive agent. Information about the wholesale price of each aversive and the existing and potential production capacity of manufacturers of aversive agents is requested. Information about the effect of the addition of an aversive on the wholesale cost of a consumer product and the sources of other increased costs which may result from the addition of aversive agents to products is requested. The Commission also seeks information about any changes observed in the marketing of a household product after the addition of a bittering agent to the product.
- *Present uses.* To address the question of the effectiveness and feasibility of the use of aversives, information is needed about the extent of current use of aversive agents. The

Commission requests information about household products currently being marketed to which an aversive agent has been added. The Commission requests information about the type and amount of each aversive agent added to each product and about the reaction of consumers, both positive and negative, to the presence of the aversive agent. Information is also requested about the present use of labels on products to alert consumers to the presence of aversive agents.

Policy Considerations

In addition to the technical information described above, the Commission also solicits statements of policy from organizations concerning the use of aversive agents to deter ingestions of consumer products. The Commission also seeks information from state and local governments concerning existing laws or bills under consideration to require the use of aversive agents in consumer products. With regard to such laws or bills, the Commission also requests any information considered in their enactment or submitted in their support. The Commission requests views about the addition of aversives to products which are not likely to present a hazard if ingested. The Commission also seeks the views of consumers about the use of aversive agents in products to deter their ingestion and about labeling of those products to notify consumers of the presence of aversives.

Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should identify all trade secret or proprietary information at the time of submission. Information which is claimed to be trade secret or proprietary information will be received and handled in a confidential manner and in accordance with section 6(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2055(a)). Such information will not be placed in a public file and will not be made available to the public simply upon request. If the Commission receives a request for disclosure of the information or concludes that its disclosure is necessary to discharge its responsibilities, the Commission will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. A determination regarding the release of information submitted in response to this notice which is claimed to be trade secret or proprietary information will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act (FOIA) (5 U.S.C. 552b); 18 U.S.C. 1905; the Commission's procedural regulations codified at 16 CFR part 1015 governing protection and disclosure of information under provisions of the FOIA; and relevant judicial interpretations of these statutes and regulation. Information which has been submitted with a claim that it is trade secret or proprietary information will not be made public until the issue of its status as trade secret or proprietary information is resolved in accordance with applicable provisions of law.

Information received in response to this notice will be considered in the study of the feasibility of requiring aversive agents to deter ingestion of consumer products required by the Improvement Act of 1990.

Dated: June 26, 1991.

Sadye E. Dunn,

Secretary.

[FR Doc. 91-15508 Filed 6-28-91; 8:45 am]

BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 91-3-SCRA]

1991 Satellite Carrier Royalty Rate Adjustment

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal gives notice of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the retransmission of broadcast television stations to home satellite dish owners. Such notice is required by section 119 of the Copyright Act. A list of those parties intending to negotiate is available from the Tribunal.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202-673-5400).

SUPPLEMENTARY INFORMATION: In 1988, Congress created a satellite carrier compulsory license. The license allows satellite carriers to retransmit broadcast television stations to satellite home dish owners for their private viewing so long as a government-set royalty rate is paid to the copyright owners of the programs being retransmitted. The initial royalty rate was set by Congress, with provisions in section 119 stating that the subsequent rate adjustment would be determined first by voluntary negotiations, and then by arbitration, if negotiations failed.

The period for voluntary negotiations is scheduled to begin on July 1, 1991 and conclude no later than December 31, 1991. On May 20, 1991, the Tribunal asked the parties who might be interested in participating in the voluntary negotiations to file a notice of intent to participate with the Tribunal by June 17, 1991. 56 FR 23050. Such notice was intended to facilitate negotiations, and failure to file a notice did not disqualify any party with standing from participating in the negotiations.

The Tribunal received notices from Eastern Microwave, Inc., Netlink USA, Primestar Partners, L.P., PrimeTime 24, Satellite Broadcasting and Communication Association, Southern Satellite Systems, Inc., and United Video, Inc. (Superstar Connection), representing satellite carriers. The Tribunal received a notice from the National Rural Telecommunications Cooperative, representing satellite distributors. The Tribunal received notices from ABC, ASCAP, BMI, Broadcaster Claimants, CBS, Devotional Claimants, Joint Sports Claimants, NBC, Program Suppliers, and the Public Television Claimants, representing copyright owners.

Accordingly, the Tribunal hereby gives notice of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under section 119 of the Copyright Act, commencing July 1, 1991. A copy of the notices of intent to participate filed by the above mentioned parties, including their named common agents, is available form the Tribunal upon request.

Dated: June 25, 1991.

Mario F. Aguero,

Chairman.

[FR Doc. 91-15528 Filed 6-28-91; 8:45 am]

BILLING CODE 1410-09-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 July 31, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: 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 Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

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

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 24, 1991.

Kent Hannaman,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for the Fulbright-Hays Seminars Abroad Program.
Frequency: One time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1,000.
Burden Hours: 1,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funding for the Fulbright-Hays Seminars Abroad Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Study of Effective Schools: Their Implementation and Success.
Frequency: On occasion.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 2,065.
Burden Hours: 1,580.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will describe strategies and programs that are effective in improving the nation's schools and the role of Federal, state and district support for these programs. The Department will use the information to aid in planning for the reauthorization of the current effective schools provision in the Chapter 2 program.

[FR Doc. 91–15538 Filed 6–28–91; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Perkins Loan and National Defense Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of availability of published amendments to the 1990–91 National Defense and Perkins (National Direct) Student Loan Program Directory of low-income schools.

SUMMARY: Institutions and borrowers participating in the National Defense and Perkins (National Direct) Student Loan Program and other interested persons are advised that they may obtain information regarding the amendments to the 1990–91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4651, ROB–3), Washington, DC 20202–5453. Telephone (202) 708–6730.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on November 26, 1990 (55 FR 49103) that the 1990–91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1990–91 academic year full-time teaching in the schools set forth in the amendments to the Directory and the Directory qualifies a borrower for cancellation.

The Secretary is providing the amendments to the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State Department of Education, regional offices of the Department of Education, or the Officeof Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1990–91 academic year.

The Office of Student Financial Assistance will retain, on a permanent basis, copies of all published amendments and Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Perkins Student Loan Cancellations)

Dated: June 24, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91-15539 Filed 6-28-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-493-000, et al.]

Portland General Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 24, 1991.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER91-493-000]

Take notice that on June 18, 1991, Portland General Electric Company tendered for filing Assignment Agreements between Portland General Exchange, Inc., and Portland General Electric Company assigning the Long Term Power Sale and Exchange Agreements between Portland General Exchange, Inc., and the Cities of Burbank and Glendale to Portland General Electric Company.

Copies of these agreements have been served on the distribution list, as included in the filing.

Comment date: July 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER91-101-000]

Take notice that on June 20, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of a revised Exhibit A to the Contract for Interchange Service between Tampa Electric and Florida Power Corporation (Florida Power), which describes the points of interconnection between the utilities. The amendment consists of a revised agreement concerning operation and maintenance of a new interconnection described in the revised Exhibit A.

Tampa Electric proposes an effective date of December 1, 1990, for the revised Exhibit A, and therefore requests a waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER91-496-000]

Take notice that on June 19, 1991, Public Service Company of Oklahoma (PSO) tendered for filing a First Amendment, dated February 28, 1991, to the Amended Agreement for Interchange of Electric Power and Energy between PSO and Grand River Dam Authority (GRDA), dated May 22, 1985. The First Amendment provides for additional interconnections and changes to present interconnections between PSO and GRDA to provide each party with additional flexibility and for GRDA to convey certain rights-of-way and facilities to PSO.

PSO seeks an effective date of October 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon GRDA and the Oklahoma Corporation Commission.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91-494-000]

Take notice that on June 18, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations,

- Supplement No. 2 dated April 18, 1990 to the May 17, 1962 Contract for Interconnections and Transmission Service, Contract No. 14-06-400-2436, as amended ("Interconnection Contract") between Western Area Power Administration ("Western") and PacifiCorp;
- Revision No. 11 of Exhibit B to the Interconnection Contract dated April 18, 1990;
- Contract for Low-Voltage Transmission Service to Utah Contractors ("Low Voltage Contract"), Contract No. 88-SLC-0065 dated April 18, 1990 between Western and PacifiCorp; and
- Fourth Revised Sheet No. 3.0 (Index of Utilities Executing Service Agreements) of PacifiCorp's FERC Electric Tariff, Original Volume No. 5 ("Tariff").

PacifiCorp has requested, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of October 1, 1987 be granted for Supplement No. 2; that an effective date of October 1, 1989 be granted for the Low-Voltage Contract; and that an effective date of June 1, 1991 be granted for the applicable services provided pursuant to the Interconnection Contract (Service Agreement) under the Tariff.

Copies of this filing have been supplied to Western, the City of Hurricane, Utah, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 8, 1991, in accordance with Standard Paragraph E end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER91-131-000]

Take notice that on June 12, 1991, Central Vermont Public Service Corporation (CVPS) submitted an amended filing in the above-referenced docket. The amended filing provides additional information requested by the Commission Staff.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company

[Docket No. ER91-497-000]

Take notice that on June 20, 1991, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing proposed supplements to its Rate Schedules FERC No. 96 and FERC No. 92.

The proposed supplement No. 5 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $64,810,000 annually based on the 12-month period pending March 31, 1993.

The proposed supplement No. 6 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 3 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), combine the rate leaves applicable to economic development customers served under Rate Schedules FERC No. 92 and FERC No. 96 to form a single set of leaves applicable to the provision of all economic development electric delivery service and increase the rates and charges for the service by $830,000 annually based on the 12-month period ending March 31, 1993.

The proposed increases are a party of a Company-wide general electric rate increase application by Con Edison which is pending before the New York Public Service Commission (NYPSC).

Con Edison states that although the proposed supplements bear a nominal

effective date of October 17, 1991, Con Edison will not seek permission to make these effective until the effective date, estimated to be on or about April 1, 1992, of the rate changes authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York State Public Service Commission.

Comment date: July 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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. 91-15542 Filed 6-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2291-000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

June 24, 1991.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP91-2291-000]

Take notice that on June 17, 1991, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-2291-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate one (1) sales tap for delivery of gas to Mississippi Valley Gas Company (MVG), an existing customer, under the authorization issued in Docket No. CP82-306-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the sales tap would be installed near mile post 4.0 on Southern's 6-inch Starkville Line in Oktibbeha County, Mississippi. Peak day deliveries are expected to be 72 Mcf. Southern asserts that the total volumes to be delivered to MVG would not exceed the total volumes authorized prior to the installation of the sales tap, 73,064 Mcf per day, and thus, further asserts that the proposed activities are not prohibited by any of its existing tariffs. Southern also states that it has sufficient capacity to accomplish the delivery proposed by the installation and operation of the sales tap without detriment to its other customers and that the construction and operation of the sales tap would not result in any termination of service and would have a *de minimis* impact on Southern's peak day and annual deliveries. Finally, Southern contends that MVG has agreed to reimburse Southern a total of $2,260.00 for the construction and installation of the sales tap.

Comment date: August 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP91-2319-000]

Take notice that on June 20, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed an application in Docket No. CP91-2319-000 pursuant to section 7(b) of the Natural Gas Act and § 157.18 of the Commission's Regulations under the Natural Gas Act to abandon, effective as of December 14, 1989, a firm sales service to Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that Northern, Trunkline, and Panhandle Eastern Pipe Line Company (Panhandle) entered into a gas transportation and sales agreement dated May 24, 1977, which, provided, *inter alia*, for the sale by Northern to Panhandle of 20 percent of the volumes of natural gas which Northern purchases from Exxon Corporation in West Cameron Block 616, Offshore Louisiana as partial consideration for the firm transportation of Northern's West Cameron 616 gas by Panhandle and Trunkline. It is indicated that the Commission authorized by order issued on September 30, 1977, the sales service by Northern in Docket No. CP77-450 and the transportation service in Docket No. CP77-533. It is also stated that Northern has been providing the sales service pursuant to its Rate Schedule X-65 to its FERC Gas Tariff, Volume No. 2.

Northern also stated that by Commission order issued September 23, 1983, in Docket No. CP77-533-005, Panhandle was granted authority to abandon the transportation service which it was providing to Northern. It was also indicated that in the same order that Northern in Docket No. CP82-528-000 and CP82-528-001 was authorized to abandon the sales service to Panhandle and initiate the sales service to Trunkline of up to twenty percent of the volumes received by Trunkline at the offshore receipt point.

Northern states that is has reached agreement with Trunkline to terminate the transportation and sales service by Trunkline and Northern, respectively. Northern proposes to abandon the sales service to Panhandle effective as of December 14, 1989. No abandonment of facilities is proposed. It is also indicated that Trunkline has filed in Docket No. CP91-1862-000 to abandon the corresponding transportation service, also effective on December 14, 1989.

Comment date: July 15, 1991, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket Nos. CP91-2312-000, [1] CP91-2313-000]

Take notice that on June 19, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Northern and is included in the attached appendix.

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[1] These prior notice requests are not consolidated.

Northern also states that it would provide the service for each shipper under an executed transportation agreement, and that Northern would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-2312-000	Broad Street Oil and Gas Company.	33,333 25,000 12,166,545	WI, OK, IA, TX, SD, KS, MN, NM, NE.	KS, SD, TX, MN, OK, NE, WI, MI, IA.	5-15-91, IT-1	ST91-8863-000.
CP91-2313-000	Aquila Energy Marketing Corp.	20,000 [3] 15,000 7,300,000	LA, Off LA, Off TX	LA, Off LA	5-14-91, IT-1	ST-9002-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportion certificate. If an ST docket's shown 120-day transportation service was reported in it.
[3] Volumes in Mcf.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP-2278-000]

Take notice that on June 14, 1991, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2278-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate certain facilities in Arkansas and Oklahoma, and for permission and approval to abandon certain facilities in Arkansas under its blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Arkla proposes to construct and operate two new sales taps and related facilities in Oklahoma and to operate one existing tap and related facilities in Arkansas for the delivery of gas to Arkansas Louisiana Gas Company for resale to domestic consumer. Arkla further proposes to abandon and remove a 120 hp rental compressor unit installed temporarily on its Line JM-21.

Arkla states that the proposed abandonment would have no impact on service to existing consumers. Arkla further states that the gas will be delivered from its general system supply, which it states is adequate to provide the delivery service.

Comment date: August 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP91-2320-000]

Take notice that on June 21, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-2320-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for KN Gas Marketing, Inc., a marketer, under the blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspections.

Natural states that, pursuant to an agreement dated February 20, 1991, under its Rate Schedule ITS, it proposes to transport up to 150,000 MMBtu per day equivalent of natural gas. Natural indicates that it would transport 60,000 MMBtu on an average day and 21,900,000 MMBtu annually. Natural further indicates that the gas would be transported from various points of receipt and would be redelivered to various delivery points.

Natural advises that service under § 284.223(a) commenced April 17, 1991, as reported in Docket No. ST91-8740-000.

6. South Georgia Natural Gas Company, Southern Natural Gas Company, Columbia Gulf Transmission Company, Columbia Gas Transmission Corporation

[Docket Nos. CP91-2292-000, CP91-2293-000, CP91-2294-000, CP91-2295-000, CP91-2296-000, CP91-2297-000]

Take notice that on June 17, 1991, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2292-000 (6-17-91)	South Georgia Natural Gas Company.	Consolidated Fuel Corp.	10,000 10,000 3,650,000	AL	GA	4-12-91, IT	CP90-2125-000, ST91-8805-000.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2293-000 (6-17-91)	Southern Natural Gas Company.	Appalachian Gas Sales.	5,000 5,000 1,825,000	Offshore LA & TX, TX, LA, MS, AL.	GA	4-13-91, IT	CP88-316-000, ST91-8589-000.
CP91-2294-000 (6-17-91)	Columbia Gulf Transmission Company.	CNG Trading Company.	50,000 40,000 14,600,000	Offshore LA	LA	5-4-91, ITS-2	CP86-239-000, ST91-8859-000.
CP91-2295-000 (6-17-91)	Columbia Gas Transmission Corporation.	Fuel Services Group, Inc.	300,000 240,000 109,500,000	KY, MD, OH, PA, NY, WV, VA.	OH, PA, WV, NY	4-18-91, ITS	CP86-240-000, ST91-8641-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2296-000 (6-17-91)	Columbia Gas Transmission Corporation.	Access Energy Corporation.	60,000 48,000 21,900,000	OH, MD, PA, NY, VA, KY, WV.	OH, MD, PA, NY, VA, KY, WV.	4-15-91, ITS	CP86-240-000, ST91-8694-000.
CP91-2297-000 (6-17-91)	Columbia Gas Transmission Corporation.	Southern Gas Company, Inc.	50,000 40,000 18,250,000	KY, WV, OH, PA, NY, MD, VA.	WV, OH, MD, KY. PA, VA.	4-18-91, ITS	CP86-240-000, ST91-8725-000.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-15543 Filed 6-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC91-17-000 and EL91-40-000]

Doswell Limited Partnership Diamond Energy, Inc.; Petition for Declaratory Order Disclaiming Jurisdiction or for Approvals Under Section 203 of the Federal Power Act and for Waiver of Regulations, and for Declaratory Order Confirming the Qualifying Status of Cogeneration Facilities

June 24, 1991.

Take notice that on June 21, 1991, Doswell Limited Partnership and Diamond Energy, Inc. ("Applicants") submitted a petition for a declaratory order disclaiming jurisdiction over a proposed transfer of interests in Doswell Limited Partnership, which is developing an independent power project that will sell energy and capacity to Virginia Electric and Power Company. In the alternative, Applicants request that the Commission approve the transfer under section 203 of the Federal Power Act. In addition, Applicants request that the Commission issue a declaratory order confirming that during the pendency of a good-faith application with the Securities and Exchange Commission by Diamond Energy, Inc.'s parent company, Mitsubishi Corporation, pursuant to section 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79c(a)(5) (1988), Mitsubishi Corporation will not be considered an electric utility holding company for purposes of the Commission's regulations under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.* (1988).

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 18 CFR 385.214). All such motions or protests should be filed on or before July 12, 1991. 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. 91-15541 Filed 6-28-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-032]

Energy Conservation Program for Consumer Products; Applications for Interim Waiver and Petitions for Waiver of Furnace Test Procedures from Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting Interim Waivers to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's GUX and GCC models of condensing gas furnaces.

Today's notice also publishes "Petitions for Waiver" from Amana. Amana's Petitions for Waiver request DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Amana seeks to test using a blower delay time of 30 seconds for its GUX and GCC models of condensing gas furnaces instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petitions for Waiver.

DATES: DOE will accept comments, data, and information not later than July 31, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-032, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Application Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waiver temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On December 12 and December 13, 1990, Amana filed Applications for Interim Waiver regarding blower time delay. Amana's Applications seek Interim Waivers from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Amana requests the allowance to test using a 30-second blower time delay when testing its GUX and GCC models of condensing gas furnaces. Amana states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.7 percent. Since current DOE procedures do not address this variable blower time delay, Amana asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 1991; and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991. Thus, it appears likely that the Petition for Waiveer will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Amana Interim Waivers for its GUX and GCC models of condensing gas furnaces. Pursuant to paragraph (e) of 430.27 of the Code of Federal

Regulations, the following letter granting the Applications for Interim Waiver to Amana Refrigeration, Inc. was issued.

Pursuant to paragrpah (b) of 10 CFR 430.27, DOE is hereby publishing the "Petitions for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, June 24, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

December 12, 1990

Assistant Secretary, Conservation & Renewable Energy
United States Department of Energy
1000 Independence Avenue, SW.
Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of Subpart B to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the cirulating air blower 30 seconds after gas valve ignition. A control of this type with a fixed 30 second blower on-time will be utilized in our GUX line of high efficiency condensing furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the heat-up cycle energy losses will decrease, the amount of condensate generated during the cyclic condensate test will increase, and the overall furnace AFUE will increase up to 1.7 percentage points. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as similar waivers have been granted in the past, to Coleman Company, Magic Chef Company, Rheem Manufacturing, and the Trane Company. An identical waiver request for the Amana GUD series furnaces has also been submitted on 15 May 1990, and is currently pending.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Alan F. Kessler, P.E.,

Chief Engineer, Environmental Products, Amana Refrigeration, Inc.

December 13, 1990

Assistant Secretary, Conservation & Renewable Energy
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnances found in Appendix N of Subpart B to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after gas valve ignition. A control of this type with a fixed 30 second blower on-time will be utilized in our GCC line of high efficiency condensing furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the heat-up cycle energy losses will decrease, the amount of condensate generated during the cyclic condensate test will increase, and the overall furnace AFUE will increase up to 1.7 percentage points. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as similar waivers have been granted in the past, to Coleman Company, Magic Chef Company, Rheem Manufacturing, and the Trane Company. [Identical waiver requests for the Amana GUD and GUX series furnaces have been submitted on 15 May 1990 and 12 December 1990, and are currently pending.]

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Alan F. Kessler, P.E.,

Chief Engineer, Environmental Products, Amana Refrigeration, Inc.

June 24, 1991

Mr. Alan F. Kessler, P.E.
Chief Engineer, Environmental Products
Amana Refrigeration, Inc.
Amana, IA 52204

Dear Mr. Kessler: This is in response to your December 12 and December 13, 1990, Applications for Interim Waiver and Petitions for waiver from the Department of Energy (DOE) test procedures for furnaces regarding below time delay for the Amana Refrigeration, Inc. (Amana) GUX and GCC models of condensing gas furnaces.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 F.R. 2710, January 18, 1985; Magic Chef Company, 50 F.R. 41553, October 11, 1985; Rheem Manufacturing Company, 53 F.R. 48574, December 1, 1988 and 55 F.R. 3253, January 31, 1990; Trane Company, 54 F.R. 19226, May 4, 1989 and 55 F.R. 41589, October 12, 1990; DMO Industries, 55 F.R. 4004, February 6, 1990; Heil-Quaker Corporation, 55 F.R. 13184, April 9, 1990; Carrier Corporation, 55 F.R. 13182, April 9, 1990; Amana Refrigeration, Inc., 56 F.R. 853, January 9, 1991; and Armstrong Air Conditioning, Inc., 56 F.R. 10553, March 13, 1991.

Amana's Applications for Interim Waiver do not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Amana will likely experience absent a favorable determination on its applications. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Amana's Applications for Interim Waiver from the DOE test procedures for its GUX and GCC models of condensing gas furnaces regarding blower time delay are granted. Amana shall be permitted to test its line of GUX and GCC condensing gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements preformed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

These Interim Waivers are based upon the presumed validity of statements and all

allegations submitted by the company. These Interim Waivers may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waivers shall remain in effect for a period of 180 days or until DOE acts on the Petitions for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if nexessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–15607 Filed 6–28–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–21–NG]

North American Resources Co.; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting North American Resources Company blanket authorization to import up to 10.95 Bcf of natural gas, over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–15605 Filed 6–28–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–04–NG]

Northern Natural Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Natural Gas Company authority to import from Western Gas Marketing Limited up to 47,500 Mcf per day of Canadian natural gas for ten years. The gas would be imported near Emerson, Manitoba and be transported from that point through the pipeline facilities of Great Lakes Gas Transmission Limited Partnership.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 24, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–15606 Filed 6–28–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRI–3970–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration

Title: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (EPA No. 1487.03; OMB No. 2010–0020). This ICR is a renewal of an existing information collection.

Abstract: Under 40 CFR Part 35 Subpart O, information is required from applicants for Superfund cooperative agreements or Superfund State contracts, and from recipients of these contracts or agreements. The information collected includes applications, certifications, and plans, as well as notifications of out-of-State transfer of CERCLA wastes. The information will be used by EPA project officers, grant specialists, and finance officers to manage or oversee clean-up activities at Superfund sites. The information will also be used to update the Comprehensive Environmental Response, Compensation, and Liability System (CERCLIS), which tracks progress made at Superfund sites. To support EPA litigation efforts directed at cost recovery, recipients must retain this information for a period of 10 years following the completion of all response actions at a Superfund site.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9 hours per response for reporting, and 1 hour per recordkeeper annually. This estimate includes the time needed to review instructions, search existing information sources, gather the data needed, review the collection of information, and store and maintain the information.

Respondents: State and local governments, Indian tribes.

Estimated Number of Respondents: 1,110.

Frequency of Collection: Annual.

Estimated Number of Responses Per Respondent: 1.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Ron Minsk, Office of Management and Budget, Office of of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 25, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–15584 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3970–3]

Science Advisory Board, Nonionizing Electric and Magnetic Fields Subcommittee; Open Meeting

July 23–25, 1991.

AGENCY: U.S. Environmental Protection Agency.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the

Nonionizing Electric and Magnetic Fields Subcommittee of the Science Advisory Board's Radiation Advisory Committee will meet July 23–25, 1991, at the Days Hotel Crystal City, 2000 Jefferson Davis Highway, Arlington, VA 22202, in the Conference Room. The meeting will begin at 9 a.m. Tuesday and adjourn on Thursday no later than 5 p.m.

At this meeting the Subcommittee will consider the Subcommittee's draft report on its review of the Environmental Protection Agency document Evaluation of the Potential Carcinogenicity of Electromagnetic Fields which was reviewed at public meetings January 14–16 and April 12–13, 1991. Copies of the Subcommittee's draft report on the carcinogenicity document will be distributed at the public meeting July 23.

At the meeting the Subcommittee will also begin its review of the Agency's document, A Research Strategy for Electric and Magnetic Fields: Research Needs and Priorities (EPA/600/9–91/016A). Single copies of the draft document, are available from the ORD Publications Office, CERI–FRN , U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268, Telephone (513) 569–7562, or FTS/684–7562. FAX: (513) 569–7566 or FTS 684–7566. Please provide your name and mailing address and request the external review draft by title and EPA number.

The meeting is open to the public. The meeting room holds about 200 people and seating is on a first-come, first-seated basis.

The Subcommitte welcomes written comment from the public and requests that commentors provide at least 20 copies. Writen comment to be mailed to the Subcommittee in advance of the meeting must be mailed to Mrs. Conway, the DFO, to arrive by noon Monday, July 15. Written comments may also be submitted at the Subcommittee meeting. Individuals providing written comments at the meeting must provide 20 copies for the Subcommittee and may wish to provide additional copies as a courtesy to other members of the public present. SAB staff will not copy materials during meeting.

The Subcommittee will accept oral comment on the research strategy, but the time allowed for oral comment is limited. Members of the public wishing to provide oral comment are urged to contact Mrs. Conway by noon Wednesday, July 17. Because the public had had the opportunity to provide oral (and written) public comment on the carcinogenicity document at two previous Subcommittee meetings, no further oral comment on this subject will be scheduled. However, one-half hour of public comment time will be reserved for unscheduled public comments. Those individuals who do not request time in advance and feel they must say something at the meeting may share this time.

An agenda has not yet been developed for this meeting, but the tentative plan is to begin with consideration of the draft Subcommittee report on the carcinogenicity document review, to schedule formal presentations by the Agency on the research strategy Wednesday morning, and to hear public comment, possibly on Wednesday evening. The remaining time is reserved for Subcommittee discussion; it is not clear now, and probably will not be clear until the meeting, how much of this time will be needed to finalize the Subcommittee's draft report. (The approved Subcommittee report must also be reviewed and approved by both the Radiation Advisory Committee and the Executive Committee of the Science Advisory Board before it becomes an official Science Advisory Board report and is transmitted to the Administrator). At the end of the meeting, the Chair will summarize the meeting and the Subcommittee's future plans. The research strategy reviews may require an additional meeting, which is tentatively planned for September 9–10.

For further information contact Mrs. Kathleen Conway, Designated Federal Official and Mrs. Dorothy Clark, Staff Secretary at (202) 382–2552. The mailing address for Mrs. Conway and Mrs. Clark is: Science Advisory Board (A–101F), 401 M Street, SW., Washington, DC 20460. The address for overnight mail is: The Fairchild Building—suite 500, 499 South Capitol Street, SW., Washington, DC 20003. Mondays and Fridays (except July 1–8) are the best days to reach Mrs. Conway.

Dated: June 25, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 91–15568 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00305; FRL–3934–4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on July 8, 1991, and ending on July 9, 1991. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, July 8, 1991, from 8:30 a.m. to 5 p.m. and on Tuesday, July 9, 1991, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: Hyatt Regency - Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1234.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of SFIREG includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Farm Bill recordkeeping.
7. Office of Pesticide Programs' and Office of Compliance Monitoring's strategic direction.
8. Other topics as appropriate.

Dated: June 26, 1991.

L. P. True,

Acting Director, Office of Pesticide Programs.

[FR Doc. 91–15677 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59294C; FRL 3929–1]

Certain Chemical; Modifications to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's modification of a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–91–9. Based on corrected chemical identity, EPA has determined that additional restrictions are necessary to ensure that the test marketing activity will not present an unreasonable risk of injury to the

environment. The additional test marketing restrictions are described below.

EFFECTIVE DATES: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, rm. E–613A, 401 M St. SW., Washington, DC 20460, (202) 382–3769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury. Based on information provided by the submitter on the chemical identity of the TME substance, the Agency believes that unrestricted releases of the substance from manufacturing and use may be toxic to aquatic organisms. Therefore the Agency believes it is necessary to prohibit discharge of the TME substance into surface waters.

EPA hereby modifies the test marketing exemption for TME–91–9. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and under the restrictions set out in this modification, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T–91–9

Notice of Approval of Original Application: April 23, 1991 (56 FR 18590).

Chemical: (G) Alkoxylated diesters.

Modified Restrictions: In addition to those conditions and restrictions published in the original Notice of Approval of Test Marketing Application, the following restrictions apply to TME–91–9:

1. The Company must not release the substance into waters of the United States.

2. The Company may distribute the substance only to persons who agree in writing to not release the substance into waters of the United States.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Do not release this substance into waters of the United States. This substance may cause toxicity to aquatic organisms.

4. The applicant shall maintain the following additional records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Copies of the labels affixed to containers of the substance or formulations containing the substance.

b. Copies of written agreements with customers pertaining to the release to water restrictions.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 21, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91–15597 Filed 6–28–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

A. Bottacchi S.A. de Navegacion C.F.I. el. et al., 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 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.: 202–009648A–052.

Title: Inter-American Freight Conference.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I. el.,
American Transportation Lines, Inc.,
A/S Ivarans Rederi, d/b/a Ivaran Lines,
Companhia Maritima Nacional,
Companhia de Navegacao Lloyd Brasileiro,
Companhia de Navegacao Maritima Netumar,
Empresa Lineas Maritimas Argentinas, Sociedad Anonima (ELMA S/A),
Empresa de Navegacao Alianca S.A.,
Frota Amazonica S.A.,
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would modify the Agreement to change the requirements in Article 8.02(a) (Actions Without a Meeting) to provide for two-thirds vote by the members for sections A or C of the Agreement.

Agreement No.: 203–011063–008.

Title: United States/Jamaica Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.,
Kirk Lines Ltd.,
Sea-Land Service, Inc.,
Zim-American Israeli Shipping Co., Inc.,
Calypso Container Lines,
Shipping Corporation of Trinidad and Tobago, Ltd.,
West Indies Shipping Corporation (WISCO),
North American Caribbean Line Ltd.

Synopsis: The proposed amendment would add Blue Caribe Line as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011290–007.

Title: Vessel Operators Hazardous Materials Association Agreement.

Parties:

Atlantic Container Line B.V.,
America-Africa-Europe Line GmbH,
Compagnie Generale Maritime,
Crowley Maritime Corporation,
Evergreen Marine Corporation (Taiwan), Ltd.,
Farrell Lines, Inc.,
Hamburg-Sudamerikanische Dampfshifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
Hapag-Lloyd A.G.,
Independent Container Line Ltd.,
A.S. Ivarans Rederi,
Kawasaki Kisen Kaisha Ltd.,

Mitsui O.S.K. Lines, Ltd.,
A.P. Moller-Maersk Line,
Nedlloyd Lijnen B.V.,
Nippon Yusen Kaisha Line,
P&O Containers, Ltd.,
Sea-Land Service, Inc.,
Senator Linie GmbH & Co. KG,
Wilh. Wilhelmsen Ltd. AS.,
Zim Israeli Navigation Shipping Co., Ltd.

Synopsis: The proposed amendment would add Australia-New Zealand Direct Line as a party to the Agreement. The parties have requested a shortened review period.

Dated: June 26, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–15556 Filed 6–28–91; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement for the Proposed Acquisition of Office Space in Washington, DC, for the Headquarters Consolidation of the Department of Transportation

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the General Services Administration (GSA) guidelines PBS P 1095.4B, GSA and the Department of Transportation (DOT) announce their intent to prepare an Environmental Impact Statement (EIS) for the acquisition of 1.7 million occupiable square feet (OSF) of office space for use by the DOT to house approximately 8,250 employees with 1,562 parking spaces in Washington, DC. The National Capital Planning Commission will serve as a cooperating agency. Acquisition of this office space will allow DOT to consolidate its offices, presently located in five buildings within the District of Columbia, into Federal Office Buildings 10A and 10B and a proposed 1.7 million OSF building.

In August 1990, GSA advertised for expressions of interest from potential offerors to provide a site and construct 1.9 million OSF of office space for DOT. GSA received six responses. In the interest of public information, these responses are identified below along with the other DOT housing alternatives that have been investigated. In order to qualify for consideration in the EIS, each alternative must satisfy the government's programmatic and environmental screening criteria. Those that will not be considered in the EIS will be documented separately.

The list of housing alternatives that will be screened for inclusion in the EIS are as follows (not listed in order of preference):

1. Government Air Rights #1

Construct a 1.9 million OSF facility at the Union Station air rights site (bounded by Union Station, K, First and Second Streets, NE) and retain Federal building 10A (800 Independence Avenue, SW.).

2. Government Air Rights #2

Construct a 1.7 million OSF facility at the Union Station air rights site and retain Federal building 10A and Federal building 10B (600 Independence Avenue, SW.).

3. Government Air Rights #3

Construct a 1.2 million OSF facility at the Union Station air rights site, retain Federal building 10A and 10B, and use the City Post Office Building (2 Mass. Avenue, NE.).

4. Government Air Rights #4

Construct an 800,000 OSF facility at the Union Station air rights site, retain Federal Building 10A, and acquire the Nassif building (400 Seventh Street, SW.).

5. Southeast Federal Center Development

Construct a 1.9 million OSF facility at the Southeast Federal Center (Fourth and M Streets, SE.), and retain Federal building 10A.

6. Union Center Plaza Development

Construct a 1.7 million OSF building on the 9.6-acre Union Center Plaza development site (bounded by North Capitol, L, First, and H Streets, NE.), and retain Federal building 10A and Federal building 10B.

7. Far East Center/Gallery Place Development

Construct a 1.7 million OSF building on the 5.6 acre Far East Center/Gallery Place development site and retain Federal building 10A and Federal building 10B.

8. North Union Square Development

Construct a 1.7 million OSF building on the 7.0 acre North Union Square development site and retain Federal building 10A and Federal building 10B.

9. Center Leg Freeway Air-Rights and Square 529 Development

Construct a 1.7 million OSF building on the 8.0 acre center leg freeway air rights and square 529 development sites and retain Federal building 10A and Federal building 10B.

10. Station Place Development in Conjunction With Federal Air Rights at Union Station

Construct a 1.7 million OSF building on the 5.6 acre Station Place development (bounded by Second, F and H Streets, NE. and Union Station) and on the Union Station air rights (south of H Street, NE.).

11. Station Place Development in Conjunction with Mount Clare Properties Development at "M" Street, NE.

Construct a 1.7 million OSF building on the 5.6 acre Station Place development site and on the 8.2 acre Mount Clare properties development site (bounded by M, N, and First Streets and Delaware Avenue, NE., and retain Federal building 10A and Federal building 10B.

12. Mount Clare Properties Development at "M" Street, NE.

Construct a 1.7 million OSF building on the 5.6 acre Station Place development and on the 8.2 acre Mount Clare properties development site and retain Federal building 10A and Federal building 10B.

13. No Action

Continue to house dot in one government-owned building, FOB–10A, and in leased space.

The EIS will consider those alternatives that emerge from the screening process referred to above. The EIS will focus on the programmatic and cumulative environmental impacts stemming from new construction.

Potential environmental impacts resulting from the Federal action include short and long-term impacts.

The consulting firm of 3D/International, Inc. has been retained to prepare the Draft and final EIS.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on July 23, 1991, and July 25, 1991, starting at 7 p.m. at Georgetown University Law Center, located at 600 New Jersey Avenue, NW., Washington, DC. Limited parking will be available on-site.

A short, formal presentation will precede the request for public comments. GSA and DOT representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, and city agencies, and interested individuals and groups that this opportunity to identify environmental concerns that should be addressed by the EIS. In the interest of available time, each speaker will be asked to limit his/her oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentator believes the EIS should address. Written statements concerning the alternatives should be mailed no later than August 9, 1991, to Ms. Julia Kremer-Ross, telephone 202–708–5334, Planning Staff (WPL), National Capital Region, General Services Administration, 7th and D Streets, SW., Washington, DC, 20407.

Dated: June 24, 1991.

Linda L. Eastman,

Director, NCR Planning Staff (WPL).

[FR Doc. 91–15527 Filed 6–28–91; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0223]

FDA's Plan for a Cooperative Pilot Program With Industry To Test Alternative Nutrition Label Formats

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to initiate a cooperative pilot program with industry to test alternative nutrition label formats. The agency is inviting members of the food industry interested in participating in the program to petition the agency under 21 CFR 101.108 which grants temporary exemptions from the requirements of 21 CFR 101.9, 101.13, and 101.25. Interested firms should submit written expressions of their interest in participating by July 31, 1991.

DATES: Submit written expressions of interest by July 31, 1991.

ADDRESSES: Submit written expressions of interest to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond E. Shucker, Center for Food Safety and Applied Nutrition (HFF–240), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1457.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of May 20, 1991 (56 FR 23072), FDA published a notice announcing the availability of a report on research on alternative nutrition label formats that is being conducted by the agency. The agency invited comments on the report and on the additional food label format research that the agency intends to conduct.

The proposed cooperative program, announced by this notice, has evolved as an extension of the agency's intent to conduct additional nutrition label format research. Under the proposed program, participating companies in conjunction with FDA will select a label format for further testing from a list of formats provided by FDA. Participants will be able to choose the products on which they will use the test label formats. The testing period will be approximately 8 months. FDA intends to begin the program in August 1991, and participants will be able to use the results of their participation to formulate comments on the changes that FDA intends to propose in early 1992 in the format of the nutrition label.

Companies that participate in the research program will also benefit by acquiring realistic information on the effects and space requirements of the tested food label formats.

The agency believes that involving the regulated industry and consumers in the process of choosing a new nutrition label format will provide reliable information on how selected label formats will be perceived on food products in the marketplace and thus will result in the agency adopting the format that is most useful to the consumer. The agency also believes that this program will encourage consumer education and public acceptance of the label format that eventually is selected by the agency.

Interested firms may obtain a copy of the procedures to be followed, pursuant to 21 CFR 101.108, labels to be tested, and the evaluation criteria to be applied, from the Dockets Management Branch (address above). Interested firms should direct their questions and comments on procedures, specific formats to be tested, and evaluation criteria to the contact person identified above.

Dated: June 25, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–15557 Filed 6–28–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0237]

Drug Export; Oxytocin Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ben Venue Laboraties, Inc., has filed an application requesting approval for the export of the human drug Oxytocin Injection to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ben Venue Laboratories, Inc., 270 Northfield Rd., Bedford, OH 44146, has filed an application requesting approval for the export of the drug Oxytocin INjection, to Canada. This drug product acts on the smooth muscle of the uterus to stimulate

contractions. The application was received and filed in the Center for Drug Evaluation and Research on November 7, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 11, 1991 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 24, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-15617 Filed 6-28-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0192]

Determination of Regulatory Review Period for Purposes of Patent Extension; Nuromax®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Nuromax® 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 human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. 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 (for example, 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 human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Nuromax®. **Nuromax® (doxacurium chloride) is a long-acting neuromuscular blocking agent, indicated as an adjunct to general anesthesia, to provide skeletal muscle relaxation during surgery. Nuromax® can also be used to provide skeletal muscle relaxation for endotracheal intubation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Nuromax® (U.S. Patent No. 4,701,460) from Burroughs Wellcome Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated June 6, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Nuromax® represented the first commerical marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.**

FDA has determined that the regulatory review period for Nuromax® is 2,142 days. Of this time, 1,425 days occurred during the testing phase of the regulatory review period, while 717 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 27, 1985. FDA has verified the applicant's claim that the date the investigational new drug application became effective was April 27, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 21, 1989. FDA has verified the applicant's claim that the new drug application (NDA) for Nuromax® (NDA 19-946) was filed on March 21, 1989.

3. *The date the application was approved:* March 7, 1991. FDA has verified the applicant's claim that NDA 19-946 was approved on March 7, 1991.

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 138 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 30, 1991, 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 December 30, 1991, 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: June 21, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91–15619 Filed 6–28–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0239]

Drug Export; Prolixin (Fluphenazine) Enanthate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers Squibb Co. has filed an application requesting approval for the export of the human drug Prolixin (fluphenazine) Enanthate Injection to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8054.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Myers Squibb Company, P.O. Box 4000, Princeton, NJ 08543–4000, has filed an application requesting approval for the export of the drug Prolixin (fluphenazine) Enanthate Injection, to Japan. This drug is indicated for use as an antipsychotic. The application was received and filed in the Center for Drug Evaluation and Research on May 30, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 11, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 24, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–15618 Filed 6–28–91; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–91–4002]

Memorandum of Understanding on Development of Neurotoxicity Risk Assessment Procedures Between the Food and Drug Administration, National Center for Toxicological Research and the Environmental Protection Agency, Health Effects Research Laboratory

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, National Center for Toxicological Research (NCTR) and the U.S. Environmental Protection Agency, Health Effects Research Laboratory (EPA/HERL). In this MOU, these parties have agreed to conduct a cooperative research program in connection with the development of neurotoxicity risk assessment procedures. By combining FDA/NCTR experience in cross-speciied extrapolation and quantitative risk assessment procedures and EPA/HERL expertise in neurotoxicity methods development/validation and electrophysiological assessment, more efficient filling of data gaps and reduction of the uncertainty of the critical assumptions of neurotoxicity risk assessment will result.

DATES: The agreement became effective May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Lyda, Office of Regulatory Affairs (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2175.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: June 25, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between The Environmental Protection Agency And The Food and Drug Administration (FDA)

[EPA Reference: PW75935043–01–0; FDA: 225–91–4002]

I. Purpose

The Environmental Protection Agency, Health Effects Research Laboratory (EPA/HERL) and the Food and Drug Administration, National Center for Toxicological Research (FDA/NCTR) have agreed to conduct a cooperative research program in connection with the development of neurotoxicity risk assessment procedures.

II. Background

The EPA/HERL and FDA/NCTR share a common interest in developing risk assessment procedures for neurotoxicants. As described in the April, 1990 Office of Technology Assessment (OTA) report on Neurotoxicology, the need for such risk assessment procedures has never been greater.

The staff of the EPA/HERL has considerable expertise in neurotoxicity methods development/validation and electrophysiological assessment. The FDA/NCTR has experience in cross-speciied extrapolation and quantitive risk assessment procedures. Because of these complementary areas of expertise, the cooperative linkage of these two groups would facilitate the development of risk assessment procedures. By working together, the two groups can delineate knowledge gaps and evaluate the uncertainty of critical assumptions. Once described, an orchestrated, cooperative effort could more efficiently fill in the data gaps and reduce the uncertainty of the critical assumptions of neurotoxicity risk assessment.

III. Substance of the Agreement

That this agreement is to describe in general terms the basis on which the parties will cooperate in experimental studies and programs and will not create binding, enforceable financial obligations against either party. Each party will handle and expend its own funds in accordance with the appropriate departmental rules and regulations.

A. The parties agree to provide scientific personnel for the purpose of designing, conducting, supervising and cooperating in experiments, studies, programs, and workshops.

B. The participating parties agree:

1. To review jointly the results of the program, on an annual basis, and to evaluate its progress. Appropriate changes can be instituted upon the concurrence of both parties in an amended version of this Memorandum of Understanding.
2. To confer on the nature of experiments to be conducted.
3. That journal authorship will depend on the extent of involvement of both parties.
4. That either party shall be free to supply the required nonexpendables, e.g., animal cages, feeding bunkers, feed containers, etc., which shall remain the property of the supplying party.
5. That the responsibilities of the cooperating parties are contingent upon funds being available from which expenditures may be legally made.
6. That upon termination, property contributions shall be returned to the contributing party unless the other party purchases the contributed property at current market value.

IV. Name and Address of Participating Parties

A. Health Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

B. National Center for Toxicological Research, Food and Drug Administration NCTR Drive, Jefferson, AR 72079–9502.

V. Liaison Officers

A. *For the Environmental Protection Agency,* Director, Neurotoxicology Division (currently Dr. Hugh Tilson), Health Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541–2671.

B. *For the Food and Drug Administration,* Chief, Pharmacodynamics Branch (currently Dr. William Slikker, Jr.), Division of Reproductive and Developmental Toxicology, National Center for Toxicological Research, NCTR Drive, Jefferson, AR 72079–9502. Telephone: (501) 541–4203.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue in effect for five years. It may be revised by mutual written consent or terminated by either party upon a 30-day advance written notice to the other party.

Approved and Accepted for the U.S. Environmental Protection Agency.
By: Lawrence W. Reiter, Ph.D.
Title: Director, Health Effects Research Lab./RTP.
Date: June 4, 1991.

Approved and Accepted for the Food and Drug Administration.
By: Ron Chemore.
Title: Associate Commissioner for Regulatory Affairs.
Date: May 13, 1991.
Concurrence:

William G. Hedling For W. Scott McMoran,

Chief, Grants Information & Analysis Branch, Grants Administration Division, EPA Action Official.

Dated: April 18, 1991.

[FR Doc. 91–15620 Filed 6–28–91; 8:45 am]
BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Transmittal and Notice of Approval of Medicaid State Plan Material; *Form Number:* HCFA–179; *Use:* This form is used by State Medicaid agencies to transmit State Plan Amendments to HCFA for approval prior to amending their State Plans; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,254; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1,254.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Pacemaker Related Data; *Form Number:* HCFA–497; *Use:* This information is gathered from providers and manufacturers to assist in developing the Food and Drug Administration's registry file and to determine when manufacturer warranty supersedes Medicare reimbursement; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 165,000; *Average Time per Response:* 8 minutes; *Total Estimated Burden Hours:* 22,000.

3. *Type of Request:* Revision; *Title of Information Collection:* Medical Review of Part B Intermediary Outpatient Therapy Claims—Field Test; *Form Number: HCFA–700/701; Use:* Medicare intermediaries will use these forms in a field test to request certain medical information from rehabilitation agencies, Clinics skilled nursing facilities, hospital outpatients, and home health agencies. The information is used to verify the medical necessity of services and is used to establish payment under the Medicare program; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; non-profit institutions; and small businesses/organizations; *Estimated Number of Responses:* 450,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 112,500.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Ambulatory Surgical Center Payment Rate Survey (ASC); *Form Number;* HCFA–452; *Use:* This survey will be used to collect cost and charge data from Medicare participating ambulatory surgical centers to update the facility payment rates beginning in 1990; *Frequency:* On occasion; *Respondents:* Small businesses/organizations; Estimated Number of *Responses:* 1,283; *Average Hours per Response:* 18.24; *Total Estimated Burden Hours:* 23,402.

5. *Type of Request:* Extension; *Title of Information Collection:* Request for Medical Review Information for Part B Outpatient Bills; *Form Number:* HCFA–9027; *Use:* Medicare contractors require certain medical information from hospitals, skilled nursing facilities, rural health clinics, hospices, end-stage renal disease facilities, and other providers to determine that requirements for Medicare coverage are met. This information is used to determine if billed services are payable in accordance with Medicare law, regulations, and guidelines; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 4,649,831; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 2,324,915.

6. *Type of Request:* New; *Title of Information Collection:* Physician Financial Interest in Clinical Laboratories Survey; *Form Number:* HCFA–R–8; *Use:* This survey will collect information on physician ownership/financial interest or compensation/remuneration arrangements. Responses will be used to implement prohibitions to referral of Medicare patients and payments for services to laboratories

with such relationships with physicians, enacted in P.L. 101–239 as amended by P.L. 101–508; *Frequency:* One-time; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; Estimated Number of Responses: 320,000; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 160,000.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–15572 Filed 6–28–91; 8:45 am]

BILLING CODE 4120–03–M

[HSQ–188–GN]

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations (AK, ID, ME, VT, DC)

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

ACTION: General notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also specifies the period of time in which in-State organizations may submit statements of interest so that they may receive Requests for Proposals (RFPs) and compete for those contracts. The States currently affected are Alaska, Idaho, Maine, Vermont, and the District of Columbia.

DATES: Statements of interest must be received at the appropriate address as provided below no later than 5 p.m. EST on July 22, 1991.

ADDRESSES: Statements of interest must be submitted to: Edward T. Hodges, Health Care Financing Administration, OBA, room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION CONTACT: Frank Sokolik, (301) 966–7220.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality that meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enhance the cost effectiveness and efficiency of the peer review process.

On June of 1984, HCFA began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for 49 of the United States, the Disrict of Columbia, Puerto Rico, the Virgin Islands, and the combined review area of the State of Hawaii, Guam and American Samoa. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with section 1153 of the Act. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and is representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer representative on its govening board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submits a proposal within the specified period of time, HCFA may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. We note that the conference agreement accompanying the legislation specifically removed the Senate amendment requirement that the Secretary give additional consideration to any qualified in-State organization in the contract competition process.

These requirements are effective with contracts eligible for renewal on or after August 1, 1988. For the purposes of renewal under section 1153 of the Act, an in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 11 PRO contracts that do not meet the statutory definition of an in-State organization. The affected areas are: Alaska, Delaware, Idaho, Kentucky, Maine, Nebraska, Nevada, South Carolina, Vermont, Wyoming, and the District of Columbia.

II. Provisions of the Notice

This notice announces that current contracts between HCFA and out-of-State PROs responsible for review in Alaska, Idaho, Maine, Vermont, and the District of Columbia will expire on March 3, 1992. Interested organizations in these States may submit statements of interest in those contracts. The statements must be received by HCFA no later than July 22, 1991, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted (or, be owned by a parent corporation, the headquarters of which is located in that State). In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be either a physician sponsored or a physician access organization.

1. Physician sponsored organization.

i. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, and be representative of the physicians practicing in the review area.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. In order to meet the substantial number requirement of A.1.i., an organization must be composed of at least 10 percent of the license doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of A.1.i., an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization.

i. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. An organization meets the requirements of A.2.i. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at least one individual who is a representative of consumers on its governing board.

If one or more organization meet the above requirements in a PRO area, and submit statements of interests in accordance with this notice, HCFA will consider those organizations to be potential sources for the contracts (identified above) that are expiring on March 31, 1992. These organizations will be furnished with a Request for Proposal (RFP) and will be considered in full and open competition for the PRO contract to provide medical review services for that State.

III. Regulatory Impact Statement

This notice merely announces the dates when contracts with various out-of-State Peer Review Organizations expire, and the period of time in which in-State organizations may file statements of interest. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

IV. Information Collection Requirements

This notice contains information collection requirements that have been approved and assigned Control Number OMB 0938–0526 by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*,). This approval expires on June 30, 1991. A request for an extension of this approval has been made.

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c–2)) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance.)

Dated: May 1, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–15573 Filed 6–28–91; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Final Funding Priorities for Nursing Special Project Grants

The Health Resources and Services Administration (HRSA) announces the final funding priorities for fiscal year (FY) 1992 Nursing Special Project Grants authorized under the authority of section 820(a)(b)(c) and (d) of the Public Health Service Act, as amended by Public Law 100–607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the appropriation of funds.

The Administration's budget request for FY 1992 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Eligible applicants are public or nonprofit private schools of nursing and other public or nonprofit private entities.

The period of Federal support should not exceed 3 years.

Nursing Special Project Grants

Special Project Grants and Contracts are presently authorized under title VIII, secton 820 of the Public Health Service Act to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in care delivery, and reduce vacancies and turnover in professional nursing positions.

Section 820(a) authorizes grants and contracts to public or nonprofit private schools of nursing or other public or nonprofit private entities to improve the quality and availability of nurse training through projects that carry out one of the following purposes:

1. Provide continuing education for nurses;

2. Demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

3. Increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and provide nursing education courses to rural areas through telecommunications via satellite;

4. Provide training and education to (a) upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees and (b) develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;

5. Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

6. Collect data to facilitate communications between health facilities and nursing students and nursing personnel with respect to agreements under which the individuals would serve as nurses in the health facilities in exchange for repayment of their educational loans by the facilities. (This activity will be carried out under contract with the Division of Nursing.)

Section 820(b) authorizes grants and contracts to accredited schools of nursing to assist in meeting the costs of providing projects:

1. To improve the education of nurses in geriatrics;
2. To develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
3. To expand and strengthen instruction in methods of such treatment;
4. To support the training and retraining of faculty to provide such instruction;
5. To support continuing education of nurses who provide such treatment; and
6. To establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

Section 820(c) authorizes grants to public and nonprofit private entities for projects to demonstrate innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice. Projects must include initiatives:

1. To restructure the role of the professional nurse to ensure that the expertise of such nurses is efficiently utilized and that they are engaged in direct patient care during a larger proportion of their work time;
2. To test innovative wage structures for professional nurses in order to (a) reduce vacancies in work shifts during unpopular work hours; and (b) provide financial recognition based upon experience and education; and
3. To evaluate effectiveness of providing benefits for professional nurses as a means of increasing their loyalty to health care institutions and reducing turnover in nursing positions.

Section 820(d) authorizes grants to public and nonprofit private entities accredited for the education of nurses for the purpose of:

1. Demonstrating innovative nursing practice models for (a) the provision of case-managed health care services (including adult day care) and health care services in the home or (b) the provision of health care services in long-term care facilities; or
2. Developing projects to increase the exposure of nursing students to clinical practice in nursing homes, home health care, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

Demonstration models must be designed (a) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and (b) to improve nursing care in home health care settings and nursing homes.

To receive support, applicants must meet the requirements of 42 CFR part 57, subpart T.

National Health Objectives for the Year 2000

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone (202) 783–3238.)

Education and Service Linkage

As part of its long range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applicants will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Statutory Requirements

Section 820(g)(2) of the statute requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose 2 of section 820(a), and section 820(b). Not more than $2 million per year could be obligated for geriatric health education center projects.

Section 820(g)(2) further requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose No. 3 of section 820(a).

Section 820(g)(2) also requires that not less than 10 percent of funds for Special Project Grants be allocated for Purpose No. 4 of section 820(a).

In addition, the following mechanism may be applied in determining the funding of approved applications.

Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

For this program, the following funding priorities will be applied. These funding priorities were established in FY 1990 after public comment and are being extended in FY 1992.

Funding Priorities for Fiscal Year 1992

Section 820(a)(1)

A funding priority will be given to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses.

Section 820(a)(4)(A)&(B)

A funding priority will be given to projects for rapid transition programs toward achievement of professional nursing degrees.

Section 820(a)(5)

A funding priority will be given to:

1. Projects which include a target population of minority or disadvantaged persons.
2. Projects which demonstrate efforts to recruit and retain minority nurses.

The following funding priorities were established in FY 1991 after public comment and are being extended in FY 1992.

Section 820(c)

A funding priority will be given to applications which demonstrate efforts to recruit and retain minority nurses.

Section 820(d)

A funding priority will be given to applications which demonstrate efforts to recruit and retain minority nurses.

Proposed funding priorities were published in the **Federal Register** on March 25, 1991 (56 FR 12381) for public comment. Several comments were received from one respondent regarding aspects of the notice for which public comment was not requested.

The respondent did, however, commend the proposed funding priorities for fiscal year 1992 which will be retained as follows:

1. A funding priority will be given to applicant institutions, where applicable, that have formal linkages between the

education program for which the applicant is seeking funding and service programs which provide comprehensive primary care services to the underserved.

2. Under section 820(a)(4)(A)&(B) a funding priority will be given to projects which demonstrate efforts to recruit and retain minority nurses.

For information regarding this program contact: Dr. Mary T. Hill, Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–14, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6193.

This program is listed at 93.359 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Reveiw of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 25, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–15621 Filed 6–28–91; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

[Social Security Ruling SSR 91-6]

Child's Insurance Benefits—Effect of a Second Adoption on an Adopted Child's Continued Entitlement to Benefits—West Virginia

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–6. This Ruling, which is based on an opinion of the Office of the General Counsel, concerns whether a child who was receiving child's insurance benefits as a legally adopted child of his grandfather's earnings record continued to be entitled to those benefits after he was legally adopted by his natural mother in West Virginia.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1711.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: June 18, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 202(d)(1) and 216(e)(1) of the Social Security Act (42 U.S.C. 402(d)(1) and 416(e)(1)) Child's Insurance Benefits—Effect of a Second Adoption on an Adopted Child's Continued Entitlement To Benefits—West Virginia

20 CFR 404.350, 404.352(b), and 404.356

The claimant was legally adopted by his grandfather, the worker, on June 15, 1985, in West Virginia. In April 1986, the worker became entitled to retirement insurance benefits, and the claimant became entitled to child's insurance benefits on the worker's earnings record. After his entitlement, the claimant was legally adopted by his natural mother in West Virginia. Entitlement to a child's benefit based on a legal adoption will terminate if the adoption is annulled, that is, determined never to have legally existed. Held, the second adoption of the claimant did not have the effect, under West Virginia law, of annulling the first adoption of the claimant. An adoption under West Virginia law can be revoked only if an interested person, who either did not consent to the adoption or was not properly served with the required notice of the adoption proceedings, successfully contests its validity or the adopted minor petitions the court for revocation of the adoption within 12 months of attaining majority. Neither of these events occurred in this case. Therefore, the claimant continued to be entitled to child's insurance benefits on the worker's earnings record after his adoption by his natural mother.

A question has been raised concerning the effect of a second adoption on a claimant's entitlement to child's insurance benefits.

Under the Social Security Act (the Act), the adoption of a claimant already entitled to child's insurance benefits on the earnings record of an individual who previously adopted the claimant does not terminate the claimant's entitlement to those benefits unless the second adoption revokes the original adoption. No such revocation occurred in this case. Therefore, the adopted claimant continued to be entitled to child's insurance benefits on the worker's earnings record after the second adoption.

On June 15, 1985, the claimant was first adopted by his grandfather, the worker, in West Virginia. This adoption was not contested by the claimant's natural mother. In April 1986, the worker became entitled to retirement insurance benefits and, pursuant to section 202(d) of the Act, the claimant became entitled to child's insurance benefits on the worker's earnings record. After his entitlement, the claimant was legally adopted by his natural mother in West Virginia.

Section 202(d)(1) of the Act authorizes payment of Social Security benefits to children of individuals entitled to retirement benefits. Section 216(e)(1) of the Act defines "child" to include a legally adopted child. In this case, there is no dispute that the claimant, as a legally adopted child, was entitled to child's insurance benefits on the worker's earnings record.

Section 202(d)(1) of the Act and 20 CFR 404.352(b) set out the provisions for termination of entitlement to child's insurance benefits. Adoption by someone other than the worker is not included among the terminating events, and therefore an adoption will not result in a termination of benefits.

However, an adopted child's entitlement to benefits is terminated if the adoption by the worker is annulled. This is so because in such a case the adoption is invalidated and determined never to have legally existed. Therefore, the issue in this case was whether the subject second adoption had the effect, under West Virginia law, of invalidating or annulling the first adoption. In the opinion of the Social Security Administration, the adoption of the

claimant by his natural mother did not annul the previous adoption of the claimant by the worker.

An adoption under West Virginia law can be revoked or annulled only in the following situations: An interested party, who either did not consent to the adoption or was not properly served with required notice of the adoption proceedings, successfully contests the validity of the adoption; or the adopted minor petitions the court for revocation within 12 months of attaining majority. W.VA. CODE section 48–4–12. Neither of these events occurred in this case. Therefore, the claimant continued to be entitled to child's insurance benefits on the worker's earnings record after the claimant's adoption by his natural mother.

[FR Doc. 91–15580 Filed 6–28–91; 8:45 am]
BILLING CODE 4190–29–M

[Social Security Ruling SSR 91–5p]

Titles II and XVI: Mental Incapacity and Good Cause for Missing the Deadline To Request Review

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91–5p. This Ruling clarifies the Social Security Administration's policy on establishing good cause for a claimant's failure to file a timely request for review of an adverse administrative determination, decision, or dismissal, or a timely request for judicial review when the evidence establishes that the claimant lacked the mental capacity to understand the procedures for requesting further review.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore MD 21235, (301) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Spcial Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: June 18, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Mental Incapacity and Good Cause for Missing the Deadline to Request Review

Purpose: The purpose of this interpretative ruling is to clarify our policy on establishing good cause for missing the deadline to request review. It is being issued to avoid the improper application of res judicata or administrative finality when the evidence establishes that a claimant lacked the mental capacity to understand the procedures for requesting review.

Citations (authority): Sections 205(b) and 1631(c) of the Social Security Act, as amended; Regulations No. 4, §§ 404.903(j), 404.909(b), 404.911, 404.925(c), 404.933(c), 404.957(c)(3), 404.968(b), 404.982; and Regulations No. 16, §§ 416.1403(a)(8), 416.1409(b), 416.1411, 416.1425(c), 416.1433(c), 416.1457(c)(3), 416.1468(b), and 416.1482.

Pertinent history: Our rules in 20 CFR, §§ 404.909(a), 404.933(b), 404.968(a), 404.982, 416.1409(a), 416.1433(b), 416.1468(a), and 416.1482, respectively, provide that a request for reconsideration, hearing before an administrative law judge (ALJ), review by the Appeals Council, or review by a Federal district court must be filed within 60 days after the date of receipt by the claimant of the notice of the determination or decision being appealed. However, the regulations also provide that a claimant can request that the 60-day time period for filing a request for review be extended if the claimant can show good cause for missing the deadline. The request for an extenson of time must be in writing and must give the reasons why the request for review was not filed timely.

When the claimant fails to timely request reconsideration, an ALJ hearing, Appeals Council review, or review by a Federal district court, the Agency applies the criteria in § 404.911 or § 416.1411, as appropriate, in determining whether good cause for missing the deadline exists.

Section 404.911(a) states: In determinng whether you have shown that you had good cause for missing a deadline to request review we consider:

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions.

Section 416.1411(a) sets out essentially the same language.

If the claimant establishes good cause for missing the deadline to request review, we process the request for review in accordance with established procedures and the prior administrative action is not final or binding for purposes of applying the rules on either res judicata or administrative finality.

The rules on administrative finality (20 CFR, §§ 404.987, 404.988, 404.989, 416.1487, 416.1488, 416.1489) provide that a final determination or decision cannot be reopened more than 4 years (2 years for supplemental security income cases) from the date of the notice of the initial determination on the claim unless one of the specified conditions in § 404.988(c) or § 416.1488(c) applies.

Similarly, the rules in 20 CFR, §§ 404.957(c)(1) and 416.1457(c)(1) indicate that an ALJ may apply res judicata to dismiss a hearing request in cases where a previous determination or decision on a claim, involving the same facts and the same issues, has become final. A determination or decision becomes final for purposes of the application of res judicata, when the claimant fails to file a request for reconsideration, or a hearing before an ALJ, or review by the Appeals Council, or judicial review, whichever is appropriate, within the time periods provided by the regulations. If the claimant establishes good cause for missing the deadline to seek judicial review of an Appeal's Council's decision or denial or review or expedited appeals process agreement, the time period will be extended.

Policy Interpretation: It has always been SSA policy that failure to meet the

time limits for requesting review is not automatic grounds for dismissing the appeal and that proper consideration will be given to a claimant who presents evidence that mental incapacity may have prevented him or her from understanding the review process.

When a claimant presents evidence that mental incapacity prevented him or her from timely requesting review of an adverse determination, decision, dismissal, or review by a Federal district court, and the claimant had no one legally responsible for prosecuting the claim (e.g., a parent of a claimant who is a minor, legal guardian, attorney, or other legal representative) at the time of the prior administrative action, SSA will determine whether or not good cause exists for extending the time to request review. If the claimant satisfies the substantive criteria, the time limits in the reopening regulations do not apply; so that, regardless of how much time has passed since the prior administrative action, the claimant can establish good cause for extending the deadline to request review of that action.

The claimant will have established mental incapacity for the purpose of establishing good cause when the evidence establishes that he or she lacked the mental capacity to understand the procedures for requesting review.

In determining whether a claimant lacked the mental capacity to understand the procedures for requesting review, the adjudicator must consider the following factors as they existed at the time of the prior administrative action:

—Inability to read or write;
—Lack of facility with the English language;
—Limited education;
—Any mental or physical condition which limits the claimant's ability to do things for him/herself.

If the claimant is unrepresented and has one of the factors listed above, the adjudicator will assist the claimant in obtaining any relevant evidence. The decision as to what constitutes mental incapacity must be based on all the pertinent facts in a particular case. The adjudicator will resolve any reasonable doubt in favor of the claimant.

If the adjudicator determines good cause exists, he or she will extend the time for requesting review and take the action which would have been appropriate had the claimant filed a timely request for review. A finding of good cause will result either in a determination or decision that is subject to further administrative or judicial review of the claim, or a dismissal (for a reason other than late filing) of the request for review, as appropriate.

If the adjudicator determines good cause does not exist to extend the time, the adjudicator will consider the claimant to have filed an untimely request for review, deny the request to extend the time for filing, and dismiss the request. The dismissal of the request for review will state the adjudicator's rationale for not finding good cause and advise the claimant that he or she can file a new application and use the written request for review as a protective filing date.

Effective date: The right to establish good cause for missing the deadline to request review is a longstanding SSA policy. SSA will apply this policy to any case brought to its attention.

Exception: In addition to this Ruling, Acquiescence Ruling AR 90–4(4), which implements the *Culbertson* and *Young* cases, must be followed when adjudicating such cases arising in the Fourth Circuit.

Cross-Reference: Program Operations Manual System, Part 2, Chapter 031, Subchapter 01; Acquiescence Ruling AR 90–4(4).

[FR Doc. 91–15581 Filed 6–28–91; 8:45 am]
BILLING CODE 4190–29–M

Finding Regarding Foreign Social Insurance or Pension System; People's Republic of China

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—People's Republic of China.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that the People's Republic of China, beginning April 14, 1989, does not have a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that the People's Republic of China does not have in effect, beginning April 14, 1989, a social insurance system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 202(t)(2)(A)).

This finding also affects the application of subparagraph (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 202(t)(4) (A) and (B)). That section provides that, subject to certain residency requirements of section 202(t)(11), section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has not less than 40 quarters of coverage under Social Security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

By virtue of the finding herein, the limitation on payment of monthly benefits to aliens included in section 202(t)(1) does not apply to citizens of the People's Republic of China receiving benefits on the earnings records of individuals who have not less than 40 quarters of coverage under Social Security or who have resided in the United States for a period or periods aggregating 10 years or more.

FOR FURTHER INFORMATION CONTACT: Terry Fahey, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966–3281.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

Dated: June 24, 1991.

James A. Kissko,

Director, Office of International Policy.

[FR Doc. 91–15582 Filed 6–28–91; 8:45 am]

BILLING CODE 4190–29

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–150–4830–11–ADVB–24 1A]

Call for District Advisory Council Nominations

June 11, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for District Advisory Councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils.

Each council comprises 10 members, except the Northern Alaska Advisory Council and the California Desert District Advisory Council, which comprises 11 and 15 members, respectively. Under the established staggered-term arrangement, the terms of approximately one-third of the members on each council will expire on December 31, 1991, and must be filled. Current council members may be reappointed or new members may be appointed. However, the eligibility of current councils members for reappointment may be affected by the governing regulations (43 CFR 1784.3(b)). Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1994.

To assure council membership that is fairly balanced in terms of points of view represented and functions performed, nominees must be qualified to provide advice in certain areas that are identified with each council position to be filled. The specific number of positions to be filled on each council and their categories will be announced through local news releases in the appropriate States and Districts. The categories will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way (or occupancy issues)
Wildlife
Public-at-Large

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager of the Bureau of Land Management at the corresponding District Office address below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, occupations, and other biographic data of qualified nominees.

DATES: All nominations should be received by July 31, 1991.

ADDRESSES: The Districts and their mailing addresses are as follows:

Alaska

Arctic, Kobuk, and Steese-White Mountain Districts (jointly served by the Northern Alaska Advisory Council): c/o Public Affairs Staff, Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, AK 99703

Anchorage and Glennallen Districts (jointly served by the Southern Alaska Advisory Council): c/o Public Affairs Staff, Alaska State Office, Box 13, Anchorage, AK 99513

Arizona

Phoenix District: 2015 West Deer Valley Road, Phoenix, AZ 85027

Safford District: 425 East 4th Street, Safford AZ 85546

Yuma District: 3150 Winsor Avenue, Yuma, AZ 85364

California

Bakersfield District: 800 Truxtun Avenue, Bakersfield, CA 93301

California Desert District: 6221 Box Springs Blvd., Riverside, CA 92507

Susanville District: P.O. Box 1090, Susanville, CA 96130–3730

Ukiah District: 555 Leslie Street, Ukiah, CA 95482–5599

Colorado

Canon City District: P.O. Box 311, Canon City, CO 81212

Craig District: 455 Emerson Street, Craig, CO 81625

Grand Junction District: 764 Horizon Drive, Grand Junction, CO 81506

Montrose District: 2465 S. Townsend Avenue, Montrose CO 81401

Idaho

Boise District: 3948 Development Avenue, Boise, ID 83705

Burley District: Route 3, Box 1, Burley, ID 83318

Coeur d'Alene District: 1808 N. Third Street, Coeur d'Alene, ID 83814

Idaho Falls District: 940 Lincoln Road, Idaho Falls, ID 83401

Salmon District: P.O. Box 430, Salmon, ID 83467

Shoshone District: P.O. Box 2–B, Shoshone, ID 83352

Montana

Butte District: P.O. Box 3388, Butte, MT 59702

Lewistown District: P.O. Box 1160, Lewistown, MT 59457

Miles City District: P.O. Box 940, Miles City, MT 59301

Nevada

Battle Mountain District: P.O. Box 1420, Battle Mountain, NV 89820

Carson City District: P.O. Box 1535 Hot Springs Road, Carson City, NV 89706–0638

Elko District: P.O. Box 831, Elko, NV 89801

Ely District: HC33 Box 150, Ely, NV 89301–9408

Las Vegas District: P.O. Box 26569, Las Vegas, NV 89126

Winnemucca District: 705 East 4th Street, Winnemucca, NV 89445

New Mexico

Albuquerque District: 435 Montano Road, NE., Albuquerque, NM 87107

Las Cruces District: 1800 Marquess Street, Las Cruces, NM 88005

Roswell District: P.O. Box 1397, Roswell, NM 88201–1397

North Dakota

Dickinson District: 2933 Third Avenue West, Dickinson, ND 58601

Oregon

Burns District: HC 74–12533 Highway 20 West, Hines, OR 99738
Coos Bay District: 1300 Airport Lane, North Bend, OR 97459–2000
Eugene District: P.O. Box 10226, Eugene, OR 97440
Lakeview District: P.O. Box 151, Lakeview, OR 97630
Medford District: 3040 Biddle Road, Medford, OR 97504
Prineville District: P.O. Box 550, Prineville, OR 99754
Roseburg District: 777 N.W. Garden Valley Blvd., Roseburg, OR 97470
Salem District: 1717 Fabry Road, SE., Salem, OR 97306
Vale District: 100 Oregon Street, Vale, OR 97918

Utah

Arizona Strip District: 390 North, 3050 East, St. George, UT 84770
Cedar City District: P.O. Box 724, Cedar City, UT 84720
Moab District: P.O. Box 970, Moab, UT 84532
Richfield District: 150 East 900 North, Richfield, UT 84701
Salt Lake District: 2370 South 2300 West, Salt Lake City, UT 84119
Vernal District: 170 South 500 East, Vernal, UT 84078

Washington

Spokane District: East 4217 Main, Spokane, WA 99202

Wyoming

Casper District: 1701 East "E" Street, Casper, WY 82601
Rawlins District: P.O. Box 670, Rawlins, WY 82301
Rock Springs District: P.O. Box 1869, Rock Springs, WY 82901–1869
Worland District: P.O. Box 119, Worland, WY 82401

FOR FURTHER INFORMATION CONTACT: The appropriate District Managers.

Dated: June 11, 1991.

Susan Lamson,

Acting Deputy Director.

[FR Doc. 91–15264 Filed 6–28–91; 8:45 am]

BILLING CODE 4310–84–M

[ES–940–4520–13; ES–044209, Group 541, Minnesota]

Notice of Filing of Plat of Survey of an Island

The plat of the survey of an island in Johnson Lake, Section 14, Township 134 North, Range 42 West, Fifth Principal Meridian, Minnesota, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on August 19, 1991.

The survey was made upon request submitted by the Manager of the Milwaukee District Office.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., August 19, 1991.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 91–15522 Filed 6–28–91; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Blowout Penstemon (Penstemon haydenii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plan for the blowout penstemon (*Penstemon haydenii*). It occurs in active blowouts in the sandhills of Nebraska. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before August 30, 1991, to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Robert McCue, Field Supervisor, Fish and Wildlife Enhancement, 203 West Second Street, Federal Building, Second Floor, Grant Island, Nebraska 68801, telephone (308) 381–5571. Written comments and materials regarding this draft recovery plan should be addressed to the Field Supervisor at the address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Office in Nebraska at the above address.

FOR FURTHER INFORMATION CONTACT: Robert McCue, (see **ADDRESS** above).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States.

Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for down listing or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Services and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The recovery plan being developed at this time addresses the recovery of the blowout penstemon which was listed as an endangered species in the Federal Register on September 1, 1987. The species has suffered habitat losses primarily resulting from the stabilization of blowout complexes.

Recovery measures proposed in this recovery plan address the species throughout its current known distribution, the Nebraska Sandhills. The goal of this recovery plan is the protected of self-sustaining populations of the blowout penstemon and the habitat occupied by this species. Surveys to determine if additional naturally occurring populations exist and to identify potential reintroduction sites are a high priority of this recovery plan. Other recovery measures addressed in this recovery plan include research to further define habitat requirements and limiting factors, establish new populations in suitable habitat, and establish management plans for each population. This recovery plan is subject to the approval of the Regional Director, U.S. Fish and Wildlife Service, Denver, Colorado.

Public Comments Solicited

The Service solicits written comments on the Blowout Penstemon Recovery Plan described above. All comments received by the date specified above

will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 24, 1991.

Robert D. Jacobsen,

Acting Regional Director.

[FR Doc. 91-15545 Filed 6-28-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Notice on Supplemental Impact Statement, 5-Year Outer Continental Shelf Oil and Gas Leasing Program Mid-1987 to Mid-1992: Outer Continental Shelf (OCS); Notice on Supplemental Environmental Impact Statement (EIS) for 5-Year OCS Oil and Gas Leasing Program; Mid-1987 to Mid-1992

In December 1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld the 5-Year OCS Oil and Gas Leasing Program, Mid-1987 to Mid-1992, against all challenges except the challenge to the cumulative impact analysis in the final Environmental Impact Statement (EIS). The court found that the final EIS failed to analyze adequately the interregional cumulative impacts on migratory species in the Alaska and Pacific OCS Regions. The court remanded the matter to the Secretary of the Interior for further consideration and any revisions to the 5-year program that consideration may warrant. In response to the remand, a Supplemental Environmental Impact Statement (SEIS) was prepared which analyzed the cumulative impacts on migratory species of simultaneous development in the Alaska and Pacific OCS Regions and alternatives that would mitigate any synergistic impacts. The final SEIS was published in August 1990. Having considered the analysis in the SEIS, on May 7, 1991, the Secretary of the Interior decided to proceed with the remainder of the 1987 Program in the Alaska Region—the sale decision processes for Sale 124 (Beaufort Sea), Sale 107 (Navarin Basin), and Sale 126 (Chukchi Sea).

Dated: June 24, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91-15540 Filed 6-28-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Proposed Concession Services Plan Yosemite National Park, CA

ACTION: Intent to prepare a supplemental environmental impact statement to the Final General Management Plan/Environmental Impact Statement for Yosemite National Park.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service, Yosemite National Park is preparing a supplemental environmental impact statement, to the 1980 Final General Management Plan/Environmental Impact Statement for the park, to assess the impacts of implementing proposed concession actions at the park. The proposal and alternatives will be based on the concession operations objectives of the 1980 General Management Plan. Action items to be considered in the concession services plan include the reduction of lodging facilities in Yosemite Valley, removal of unnecessary administrative and other support services, removal of resort activities, numbers and types of food service and merchandising facilities, retention and rehabilitation of remaining structures and other visitor services and facilities.

Persons wishing to comment upon or provide input to the scoping process for the supplementary environmental statement should provide such comments to the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389, by August 1, 1991. For further information, contact the Superintendent at the above address or telephone number (209) 372-0200.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft supplemental environmental statement is expected to be completed and available for public review in November 1991, and the final environmental statement and record of decision anticipated in spring 1992.

Dated: June 12, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91-15515 Filed 6-28-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 328]

Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of revision in tank car valuation methodology.

SUMMARY: Pursuant to a notice published on January 25, 1991, at 56 FR 2947, the Commission is adopting a revised standard for valuing certain privately-owned tank cars used by railroads previously established in the national agreement adopted in Investigation of Tank Car Systems, 3 I.C.C.2d 196 (1986) (Tank Car). The Commission is adopting the revision to replace the former valuation standard that was based upon the now-repealed investment tax credit. The revised standard applies to tank cars manufactured after July 1, 1991, (a) where no invoice is available, such as where a car is retained by the manufacturer for its own leasing business, or (b) where the invoice demonstrably does not reflect the true value of the car, such as where a purchaser can show that it has contributed physical assets of significant value that were used by the manfacturer in fabricating the car and which resulted in a reduction of the invoice price by more than $1,000 per car below the price that othwerwise would have been charged. In either instance, an owner can certify an alternative "true value," which, subject to certain limitations, is the price for which a car or group of cars would have been sold in an arms-length transaction.

Under the revision, any car owner certifying a "true value" is required to provide the auditor of AAR an annual officer's certificate of compliance with the Commission's order. Also, car registrants must provide certain information necessary to determine the "true value" of tank cars.

EFFECTIVE DATES: July 1, 1991.

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.].

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We certify that this action will not have a significant impact on a substantial number of small entities. The revised valuation standard will make tank car allowances more market sensitive and therefore more conducive to an appropriate level of investment in tank cars. The valuation methodology merely replaces a former methodology that is no longer appropriate.

Decided: June 24, 1991.

Authority: 49 U.S.C. 10321, 10324(b), 10747, and 11122, and 5 U.S.C. 553.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-15576 Filed 6-28-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 138X]

Southern Pacific Transportation Co.—Abandonment Exemption—In Harris County, TX

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its approximately 2.80-mile line of railroad between mileposts 0.275 and 3.074, in Houston, Harris County, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the 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.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 31, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environemental 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 July 11, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must file by July 22, 1991, 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: Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

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 July 5, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, See at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 19, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-15575 Filed 6-28-91; 8:45 am]

BILLING CODE 7035-01-M

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[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 encourage 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. Asssit.,* 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdictions to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Microelectronics and Computer Technology Corporation

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"), Microelectronics and Computer Technology Corporation ("MCC") on March 1, 1991 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership and certain other information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antiturst plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990 and January 17, 1991. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), and February 11, 1991 (56 FR 5424), respectively. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

MCC and Lehigh University have agreed to enter into agreements with third party organizations for the purpose of conducting research in the area of non-hermetic electronic packaging. This research is identified as the RwoH Project.

Occidental Chemical Corporation has become an Associate Member of MCC and a participant in the RwoH Project. Advanced Micro Devices, Inc. an Eastman Kodak Company, existing shareholders of MCC, also will participate in the RwoH project.

Dover Electronics Co. and W.T. Automation, Inc. have executed Vendor Agreements for MCC's Open Systems Satellite.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-15525 Filed 6-28-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Notifications; Portland Cement Association

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 Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 28, 1991, disclosing that there have bene changes in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Gulf Coast Portland Cement Co. has become a member, and Mississippi Concrete Industries Association is no longer a member.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on Feburary 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, Feburary 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, January 31, 1990, May 29, 1990, July 15, 1990, December 18, 1990, and January 31, 1991, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additonal notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), February 1, 1990 (55 FR 3497), March 7, 1990 (55 FR 8204), July 3, 1990 (55 FR 27518), July 19, 1990 (55 FR 29432), January 25, 1991 (56 FR 2950), and March 15, 1991 (56 FR 11274, respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-15526 Filed 6-28-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and consistent with 42 U.S.C. § 9622(i), notice is hereby given that on June 14, 1991, a proposed consent decree in *United States of America* v. *Mattiace Industries, Inc., et al.*, Civil Action No. CV-86-1792, was lodged with the United States District Court for the Eastern District of New York. This consent decree resolves the United States' claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for recovery of cleanup costs incurred by the United States Environmental Protection Agency ("EPA") in response to hazardous substances released when a tanker-trailer loaded with methyl-ethyl ketone (MEK) overturned at a site (the "MEK Spill site") in Hicksville, New York. The consent decree also resolves the United States' claims for damages and civil penalties, pursuant to sections 107(c)(3) and 106(b)(1), based on the defendants' failure to comply with EPA administrative orders directing them to investigate and clean up the spilled MEK.

The consent decree provides that the defendants will pay a total of $1,700,000, plus interest accrued on that amount since December 10, 1990, when it was deposited in escrow, to the Hazardous Substances Superfund. This payment will fully reimburse EPA for the costs of all work that it has performed at the MEK Spill Site, which amounted to approximately $1.2 million, with the remainder allocable to prejudgment interest and damages for non-compliance with EPA's administrative orders.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mattiace Industries, Inc.*, D.J. Ref. 90-11-2-109.

The proposed consent decree may be examined at the office of the United States Attorney, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91-15523 Filed 6-28-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *State University of New York*, Civil Action No. 88-CV-814 (N.D.N.Y.), was lodged on June 13, 1991, with the United States District Court for the Northern District of New York. The proposed Consent Decree requires the defendants State University of New York—College at Cortland, Board of Trustees of State University of New York, State University of New York Construction Fund, Board of Trustees of State University of New York Construction Fund, J&K Plumbing & Heating Company, Inc., and DD&H Associates, Inc. to pay a civil penalty of $20,000, and obligates them to comply with the Clean Air Act, 42 U.S.C.

§ 7412(c), and the National Emission Standard for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), 40 CFR part 61, Subpart M.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *State University of New York*, 90–5–2–1–1242.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of New York, James T. Foley Federal Building, Room 231, 4445 Broadway, Albany New York 12207; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, D.C. 20004. A copy of the proposed Consent Decree can be obtained in person or by mail from the Document Center. In requesting a copy of the Consent Decree, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Divsion.

[FR Doc. 91–15524 Filed 6–28–91; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of hearing.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces the forthcoming meeting.

DATES AND TIME: Wednesday, July 10, 1991 8:30 a.m. to 5 p.m.; Thursday, July 11, 1991 8:30 a.m. to 5 p.m.

PLACE: Old Colony Inn, 625 First Street, Alexandria, VA.

TYPE OF EVENT: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: Discussion of Commission's Comprehensive Report and other Commission Business.

Interpreting services are available for deaf people. Please call our TDD number (202) 254–3816 to request services no later than July 3, 1991.

Dated: June 25, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91–15555 Filed 6–25–91; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts in Education 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 Arts in Education Advisory Panel (Arts Education Collaboration Initiative Section) to the National Council on the Arts will be held on July 17, 1991 from 9 a.m.–5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.–5 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9 a.m.–5 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 the confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time federal employee. If the chairman is not a full-time Federal employe, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of 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: June 20, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–15561 Filed 6–28–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by July 25, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, Attn: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Graduate Students and Postdoctorates in Science and Engineering.

Affected Public. Non-profit institutions.

Responses/Burden Hours. 10,500 Respondents at 1 hour and 10 minutes per response.

Abstract: This survey is the only source of national statistics on graduate students and on student and postdoctorate support in graduate science/engineering programs. Federal agencies, State Education Boards, institutions of higher education and others use the data to monitor S/E education progress and to plan for future S/E personnel needs.

Dated: June 26, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-15548 Filed 6-28-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1991; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also included in NUREG-0090, Vol. 14, No. 1 ("Report to Congress on Abnormal Occurrences: January-March 1991"). This report will be available in the NRC's Public Document Room 2120 L Street, NW., (Lower Level), Washington, DC about three weeks after the publication date of this Federal Register Notice.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

91-1 Significant Degradation of Plant Safety at Nuclear Fuel Services, Inc. in Erwin, Tennessee

One of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and Place—Escalated enforcement action proposed on March 20, 1991, for an event occurring on November 28, 1990; Nuclear Fuel Services, Inc.; Erwin, Tennessee.

Nature and Probable Consequences—Nuclear Fuel Services, Inc. is a fuel production facility that produces nuclear fuel for the U.S. Navy. On November 30, 1990, licensee personnel discovered that on November 28, 1990, 395 grams of uranium-235, contained in liquid waste, had been processed through the waste water treatment system for collection and disposal of the uranium. This quantity was above the administrative criticality safety limit of 350 grams for the unfavorable geometry tanks used to hold the waste. (A favorable geometry tank is one having dimensions specifically designed to prevent criticality of its fissile material contents. An unfavorable geometry tank can be used, however, if the amount of fissile material is kept below that needed to achieve criticality.)

While the amount of uranium-235 was well below the amount needed for criticality, the circumstances associated with the event were particularly safety significant. Highly concentrated uranium solutions in an adjoining part of the process were available in quantities that were more than sufficient to have caused a criticality accident in the unfavorable geometry tank. The hydrostatic head associated with those highly concentrated solutions would have been sufficient to force those solutions into the unfavorable geometry tank if the set of normally closed valves were faulty or were not fully closed. The event is briefly described as follows:

Filling of storage tanks with liquid waste from the solvent extraction system in the high enriched uranium recovery process began on November 27, 1990. When the tanks were full, the contents were recirculated prior to sampling. An operator collected two samples of the liquid and submitted them for analysis. The analytical results were received on November 28, 1990, and revealed that the uranium concentration in the liquid was well below the authorized discard limit, hence, the quantity of U-235 was below the safety limit of 350 grams. The liquid waste was then pumped to another tank where it was mixed again, sampled for material accountability purposes, and then pumped to the Waste Water Treatment Facility (WWTF).

On November 30, 1990, the laboratory reported the results of the accountability sample to be above the authorized discard limit. This higher concentration was confirmed by analysis of another sample which has been obtained when the liquid was received at the WWTF. These analyses confirmed each other, and all discharges were halted as a special licensee investigation team initiated a detailed review to determine the causes and needed corrective actions. At about 4:15 p.m., the licensee reported the incident to the NRC.

The NRC issued written confirmation on November 30, 1990, that the licensee would refrain from transferring liquid waste until certain actions had been completed. An NRC inspector was dispatched to the site on December 1 and two other NRC personnel arrived on December 2, 1990, to perform a special NRC team inspection.

Cause or Causes—The licensee identified the probable causes of the November 28 event to be: (1) Less than adequate piping layout that allowed uranium solutions to flow into the unfavorable geometry tank, and (2) personnel-related inadequacies in that operators had no knowledge of the potential for crossover of highly concentrated uranium solutions into unfavorable tanks as a result of open valves or other anomalies in the piping systems.

Following a review of the incident, the NRC concluded that there appeared to be other root causes in addition to those given by the licensee. These root causes include:

(1) The safety basis for the plant was less than adequate because a documented safety analysis was not available.

(2) As a result of the lack of a detailed safety analysis, equipment important to safety, such as valves, were not properly identified, protected, emphasized in plant control documents and training sessions, tested and maintained appropriate to their safety function, and did not possess positive closure indication.

(3) The design basis of the plant was less than adequate. The system drawings lacked adequate detail.

The licensee missed an opportunity to preclude the problems several years earlier when modifications were made to the piping system. The licensee's reviews of the modifications failed to identify the significant potential for uranium solutions to flow into unfavorable geometry vessels.

Actions Taken to Prevent Recurrence

Licensee—Corrective actions included modification of the piping system to prevent highly concentrated uranium solutions from flowing into the unfavorable geometry tanks. A review of the fuel recovery facility was initiated to identify the nuclear safety features and controls for each unfavorable geometry vessel. A Nuclear Criticality Safety Performance Improvement Program (PIP), that had been instituted prior to the incident, was accelerated and expanded to address the root causes. Training was also given to fuel recovery personnel to make them aware of the problem.

NRC—The special NRC team inspection identified two violations dealing with (1) failure to perform an adequate evaluation of equipment joined by piping for the possibility of siphoning and (2) failure to adhere to the administrative criticality safety limit of 350 grams of uranium-235 in unfavorable geometry tanks.

The NRC inspected the actions taken and, following the licensee's

identification of the safety features and controls, issued a letter authorizing resumption of solution transfers on December 18, 1990. An Enforcement Conference with the licensee was held on January 18, 1991. On March 20, 1991, the NRC forwarded a Notice of Violation (for the violations identified during the special NRC team inspection) and proposed a civil penalty of $10,000. The two violations were classified as Severity Level II on a scale in which Severity Levels I and V are are the most and least significant, respectively. The licensee has paid the civil penalty.

In early 1991, the NRC, prepared an action plan for the licensee's facility. This plan is updated quarterly and tracks the completion of the licensee's PIP items, quarterly NRC and licensee management meetings on the PIP status, and NRC technical reviews of PIP. Other items addressed in the plan include license renewal milestones and management meetings on decommissioning activities. A full-time resident inspector started at the facility on Aprl 22, 1991.

* * * * *

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

91–2 Medical Diagnostic Misadministration at Hutzel Hospital in Detroit, Michigan

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—January 17, 1991; Hutzel Hospital; Detroit, Michigan.

Nature and Probable Consequences—On January 24, 1991, the licensee notified NRC Region III that a medical diagnostic misadministration had occurred at its facility on January 17, 1991, when a patient was administered a dosage of iodine–131 that was 100 times greater than prescribed. A written report was received by Region III on February 1, 1991.

On January 16, 1991, a 37-year-old female patient (who had given birth to a baby 2 days earlier) was scheduled to have a thyroid scan to determine if she had a substernal goiter (beneath the breastbone). The licensee's normal procedure for such a thyroid scan usually involves administration of a 50-microcurie dosage of iodine-131. This would typically result in a thyroid dose in the range of 50–70 rads. The prescription for the procedure was prepared by a physician's assistant at the direction of the referring physician. The nuclear medicine technologist subsequently discussed the procedure with the physician's assistant and questioned whether or not the thyroid scan was the appropriate procedure. The technologist indicated a whole body scan to identify thyroid tissue throughout the body would be the appropriate test. The physician's assistant agreed and submitted a new order for the whole body scan. The iodine-131 was administered to the patient on January 17, 1991, with the whole body scan performed on January 18, 1991. The procedure constitutes a misadministration because the referring physician had not intended to perform a whole body scan using iodine-131.

The whole body scan involved a dosage of 5 millicuries of iodine-131 instead of 50 microcuries, which would have been used for the diagnostic procedure actually prescribed by the referring physician. Although the whole body scan is a diagnostic test—intended for patients who have had their thyroid removed—the 5-millicurie dosage is in the range that may be used for treatment of thyroid disorders

Prior to administering the iodine-131, the technologist determined that the patient was not breast-feeding her baby and did not intend to breast feed. (Breast-feeding a baby is a concern because the radioactive iodine can be passed to the baby through the milk.) Some direct radiation exposure was received by the baby due to the presence of the iodine-131 in the mother's body. This exposure, however, was minimal (estimated to be approximately 0.5 millirads) because the baby was with the mother for only a 30-minute period because of the mother's medical problems. After the misadministration was discovered, contact between the mother and baby was restricted for two days to avoid further radiation exposure to the infant.

The NRC retained a medical consultant to evaluate the circumstances of this case. The consultant estimated that the patient received a dose of approximately 6500 rads to her thyroid. This exposure would carry a slightly increased risk of developing hypothyroidism or thyroid cancer. Because the patient was lactating, thus concentrating the radioactive iodine in the breasts, there would also be an increase in the patient's risk of breast cancer. The consultant recommended periodic monitoring of the patient for hypothyroidism and for breast and thyroid cancer.

Cause or Causes—This misadministration was caused by the modification of the intended diagnostic procedure as a result of the discussion between the physician's assistant and the nuclear medicine technologist. This modification, which involved substantially increasing the dosage of radioactive iodine-131, was not reviewed by or approved by the patient's physician. The physician, in fact, desired the thyroid scan procedure using the lower dosage.

An NRC inspection to review the circumstances of the misadministration also determined that the hospital had not provided training in the proper ordering and administration of radiopharmaceuticals to individuals working under the supervision of a physician designated on the NRC license.

Actions Taken to Prevent Recurrence

Licensee—The hospital adopted new procedures requiring specific approval by an authorized physician prior to the oral administration of more than 50 microcuries of iodine-131. This authorization is to be obtained immediately prior to the planned administration. The hospital also reffirmed that the technologist and physician's assistants are not permitted to change an order given by an attending physician.

The hospital recommended that the patient be placed on a thyroid hormone to inhibit the growth of thyroid nodules and that she be monitored for possible development of hypothyroidism or other complications.

NRC—A special inspection was conducted February 19, 1991, to review the circumstances surrounding the misadministration. The inspection identified two apparent violations associated with the incident: (1) Failure to instruct supervised individuals on the principles of radiation safety, and (2) use of NRC-licensed material by unauthorized individuals. These inspection findings remain under review by the NRC, and enforcement action is pending.

* * * * * * * *

91–3 Medical Therapy Misadministration at Washington Hospital Center in Washington, DC

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—February 1, 1991; Washington Hospital Center; Washington, DC

Nature and Probable Consequences—On February 1, 1991, NRC Region I was notified by the licensee that a therapeutic misadministration involving

a teletherapy unit had occurred at its facility earlier that day.

A 74-year-old patient was to have received 250 rads to the brain for cancer treatment. The technologist identified the patient; however, the technologist examined another chart without verifying the name on the chart or the picture of the patient on the chart. No patient treatment area markers, such as tattoos, were used. Using the wrong chart, the technologist proceeded to set up a 5.0 centimeters by 6.5 centimeters field size and initiated treatment of the patient's larynx. The thyroid of the patient was not blocked from exposure to the teletherapy beam. While the patient was undergoing treatment to the larynx, the technologist realized that the wrong organ was being treated. The technologist immediately terminated the patient treatment. It was estimated that 57 rads were delivered to the larynx, and about the same to the thyroid. The wrong chart indicated that 100 rads were to be delivered to the larynx in 1.38 minutes and the treatment was terminated after 0.79 minutes. After termination of the larynx treatment, the patient was given the proper treatment of 250 rads to the brain.

Region I contacted an NRC medical consultant to review the event. The consultant noted that there were no acute symptoms and that there should be no long term medical implications during the expected lifetime of the patient.

Cause or Causes—The technologist failed to follow proper identification procedures.

Actions Taken to Prevent Recurrence

Licensee—The licensee provided additional training for the technologist in the proper identification procedures for treatment plan verification.

NRC—The Region I staff will examine the circumstances behind the incident during the next inspection of the program at the licensee's facility.

* * * * *

91–4 Medical Therapy Misadministration at Hahnemann University Hospital in Philadelphia, Pennsylvania

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place.—February 14–18, 1991; Hahnemann University Hospital; Philadelphia, Pennsylvania.

Nature and Probable Consequences.—On February 22, 1991, NRC Region I was notified by the licensee that a therapeutic misadministration had occurred at its facility during the period from February 14 to 18, 1991, while a patient was undergoing radiation therapy for a tumor in the eye.

A radiotherapy physician prescribed a therapeutic dose of 30,000 rads to the base of the tumor and 14,300 rads to the apex of the tumor from an iodine-125 custom-designed eye plaque. The staff physicist who designed the eye plaque informed the radiotherapy physician that based on the eye plaque design, a dose of 30,000 rads would be delivered to the base of the tumor and 9,925 rads to the apex over 127.8 hours. This treatment plan was found acceptable and agreed upon. While the physicist was designing the eye plaque and calculating the anticipated dose, he decided to change to an eye plaque with a different radius of curvature. The physicist changed the coordinates for placement of each iodine-125 seed used in the plaque but failed to change the associated points for calculation of dose to various depths within the eye.

On February 18, 1991, the physicist suspected that an error had occurred while planning a treatment for another patient with a similar tumor. At that point, he retrieved patient data from the computer for the treatment started on February 14, 1991, reviewed the data, and confirmed that an error had been made. The patient's eye plaque was then removed. At that time, a total of 99.25 hours had elapsed since the beginning of the treatment, resulting in a total treatment dose of about 59,000 rads to the base of the tumor and 19,500 rads to the apex of the tumor. The licensee stated that the dose received by the tumor was within acceptable medical treatment protocols for that type of tumor, and that no acute effects were observed in the patient.

NRC Region I contacted an NRC medical consultant to review the event. The consultant stated that there was an increased risk of long term adverse effects, (e.g., cataract, tissue damage).

Cause or Causes.—The causes are attributed to human error on the part of the licensee's staff physicist, lack of written procedures, and lack of dual verification of dose calculations prior to administration.

Actions Taken To Prevent Recurrence

Licensee.—The licensee's planned corrective actions include establishing written protocol for this procedure, including a second verification of the treatment calculations prior to administration of dosages to patients.

NRC.—An NRC Region I inspector conducted a special inspection of the circumstances surrounding this misadministration on February 25, 1991. The inspection report was forwarded to the licensee on March 11, 1991. The report notes that the inspector suggested that the licensee establish a written protocol for the procedure and the licensee agreed. The report also identified one violation of NRC requirements, i.e., failure to notify the NRC of the therapy misadministration within 24 hours of discovery. A management meeting between NRC Region I and licensee management was conducted on March 21, 1991, to review the licensee's actions to prevent recurrence.

* * * * *

91–5 Medical Therapy Misadministration at Clara Maass Medical Center in Belleville, New Jersey

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place.—March 28, 1991; Clara Maass Medical Center; Belleville, New Jersey.

Nature and Probable Consequences.—On March 28, 1991, the licensee informed NRC Region I that a therapeutic misadministration, involving administration of iodine-131 to the wrong patient, had occurred earlier that day.

A radiotherapy physician prescribed a therapeutic dosage of 10 millicuries of iodine-131 to a patient for the treatment of hyperthyroidism. The physician that was familiar with the patient was not able to administer the therapeutic dosage and asked another physician to administer it. In the meantime, a transporter, while reviewing the patient transport requests, noted that the patient was listed in a bed that she believed was occupied by another patient. The transporter notified the nuclear medicine secretary to check into the discrepancy. The secretary referred to a patient list for the patient's name, noted the area of the hospital where the patient's room was, and changed the request form. The secretary did not know that there were two patients in the hospital with the exact same names. (The second patient was in the hospital for a lung condition.) Also, the secretary did not know the computer program that generated the patient list did not print duplicate entries. The patient's name who was to undergo treatment for hyperthyroidism was not printed on the list.

The physician who administered the dose picked up the request form and the iodine-131 dosage from the Nuclear

Medicine Department and went to the nursing station on the floor of the patient with the lung problem. The physician did not inform the nursing staff that he was about to administer a therapeutic dosage to one of their patients and went to the lung patient's room. There, he asked the patient his name and verified the name on the wrist band but did not cross check the patient number on the wrist band with the patient number on the request form. The physician completed the request form and returned the patient folder to the nurses' station. Within five minutes of the administration of the radiopharmaceutical, the nurses discovered the error and informed the physician and the Radiation Safety Officer. The licensee decided to administer a thyroid blocking agent of 1000 milligrams of potassium iodide immediately, with three subsequent doses of 1000 milligrams each given at four hour intervals.

The licensee determined that the thyroid of the patient received an uptake of between 80 and 100 microcuries of iodine-131 which would give a dose of between 112 and 140 rads. An NRC medical consultant, who reviewed the event, concurred with these figures. The licensee advised the NRC that no adverse effects were anticipated during the lifetime of the patient as a result of the misadministration.

Cause or Causes—The causes were attributed to failure to follow the hospital protocol of checking the patient identification number, and failure to inform the head nurse of the floor of the therapeutic procedure, prior to administration.

Actions Taken to Prevent Recurrence

Licensee—The licensee's planned corrective action includes establishing a check list that must be completed by individuals administering therapeutic dosages. The check list will require that the person administering the dosage to check, as a minimum, the type of radiopharmaceutical to be administered, the activity of the dosage, the name of the patient, and the patient number; it will also require notification of the nursing staff that one of their patients is undergoing radiopharmaceutical therapy. Other actions include changing the computer program so that all of the information is printed out on the patient list, and reinstruction to personnel regarding patient verification procedures.

NRC—On April 1, 1991, a Region I inspector conducted a special inspection of the circumstances surrounding this misadministration. The inspection report was forwarded to the licensee on April 17, 1991. No violations of regulatory requirements were identified. The licensee's corrective actions are considered satisfactory.

* * * * *

Dated at Rockville, MD this 24th day of June 1991.

For The Nuclear Regulatory Commission.

Samuel J. Chilk

Secretary of the Commission.

[FR Doc. 91-15601 Filed 6-28-91; 8:45 am]

BILLING CODE 7590-01-M

Licensing Support System Advisory Review Panel; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94-463, 86 Stat. 770-776), that the Licensing Support System Advisory Review Panel (LSSARP) will hold a meeting on July 17, 1991. The meeting will convene at 9 a.m. in the fifth floor hearing room, East West Towers Building (West Tower), 4350 East West Highway, Bethesda, Maryland. The Nuclear Regulatory Commission (NRC) established the LSSARP to provide advice and recommendations to the NRC and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development, and operation of an electronic information management system known as the Licensing Support System (LSS). This system is being designed to contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste (HLW).

The agenda for the meeting, at which the Committee will receive several briefings by the Office of the Licensing Support System Administrator (LSSA), is as follows:

Agenda

LSS Advisory Review Panel Meeting

July 17, 1991

9:00 Administrative Issues
9:30 LSSA's Proposed LSS Development Schedule
10:45 LSSA's Procurement Strategy and Approach—Use of SAIC Deliverables
1:30 LSSA's Quality Management Approach
2:15 LSSA's Automated Project Management System
3:15 Finalization of Header Working Group Recommendations
Update on Revised Topical Guidelines
Update on Technical Data
5:00 Adjourn

The meeting will be open to the public. Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for oral statements.

For further information regarding this matter, contact Marilee Rood, Office of the LSS Administrator, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone 301-492-4003.

Dated at Rockville, Maryland, this 25th day of June 1991.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-15602 Filed 6-28-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Yankee (Rowe) Nuclear Power Station, Receipt of Petition Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, acknowledges receipt of a petition filed jointly by the Union of Concerned Scientists and the New England Coalition on Nuclear Pollution pursuant to 10 CFR 2.206 for emergency enforcement action against Yankee Atomic Electric Company's Yankee Rowe Nuclear Power Plant.

The petition seeks the immediate shutdown of the Yankee Rowe Nuclear Power Plant which the petitioners allege are operating in violation of the Nuclear Regulatory Commission's standards for pressure vessel integrity. For the reasons discussed in a letter to Diane Curran from Thomas E. Murley, dated June 25, 1991, the request for immediate relief has been denied.

A decision concerning this petition will be addressed in a final decision in the near future.

A copy of the petition is available for public inspection in the Commission's Public Document Room, located in the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 25th day of June, 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Offfice of Nuclear Reactor Regulation.

[FR Doc. 91-15603 Filed 6-28-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Performance Management and Recognition System Review Committee Meeting

The Office of Personnel Management announces the following meeting:

Name: Performance Management and Recognition System Review Committee Meeting.

Date and Time: July 16, 1991, 10 a.m. to 5 p.m.

Place: Room 5A06A, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Purpose of Meeting: To review the Performance Management and Recognition System and make recommendations for a fair and effective performance management system for Federal managers.

Agenda: July 16, 1991—Committee goals and objectives; scope of inquiry; research and resources on performance-based pay; basic issues and challenges facing the committee; committee administration; comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The committee welcomes written data, views, or comments concerning systems for managing and recognizing the performance of Federal managers. All such submissions received by close of business July 9, 1991, will be provided to the committee members and included in the record of the July 16, 1991, meeting.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at the July 16, 1991, meeting should submit a written request to be heard by close of business July 9, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, an an estimate of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–15622 Filed 6–28–91; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 890; Docket No. MC91–1]

Postal Service's Proposal to Establish Rate Categories and Discounts for Pre-Barcoded Flat-Shaped Mail and Order Designating Officer of the Commission and Date for Intervention

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

Issued June 25, 1991.

Notice is hereby given that on June 21, 1991, the United States Postal Service, pursuant to § 3623 of title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on establishment of rate categories and discounts for pre-barcoded flat-shaped mail. The Postal Service's proposed rates for the first ounce of bulk First-Class pre-barcoded flats are 26.3 cents for nonpresorted flats and 23.2 cents for First-Class flats presorted to 3/5 digit ZIP Codes. Proposed second-class flat discounts are 1.7 cents for mail presorted to 3/5 digit ZIP Codes and 2.5 cents for flats entered at the required second-class sortation level. Proposed third-class flat discounts for regular bulk and nonprofit third-class mail meeting the basic sortation requirements are respectively 3.5 and 3.0 cents. The proposed discount for both third-class regular bulk and nonprofit flats presorted to 3/5 digit ZIP Codes is 1.8 cents.

The proposal was accompanied by filing of the direct testimony of four Postal Service witnesses. Their testimony includes a discussion of anticipated cost savings underlying the proposed rates and market research assessing mailer response to flat discounts.

Intervention

Persons desiring to participate as a party should file a notice of intervention with the Secretary of the Commission on or before July 22, 1991, in accordance with § 20 of the Commission's rules of practice (39 CFR 3001.20). Notices of intervention shall affirmatively state whether the person filing requests a hearing, or in lieu thereof, a conference; whether such person intends to participate actively in a hearing; and shall set forth the nature of such person's interest in the issues, to the extent such interest is known. Persons seeking limited participation but not party status may, on or before July 22, 1991, file a written notice of intervention as a limited participator, pursuant to § 20a of the rules of practice (39 CFR 3001.20b). In addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to § 20b of the rules of practice (39 CFR 3001.20b).

Officer of the Commission

The Officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The Officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by § 10(c) of the rules of practice (39 CFR 3001.10(c)).

The Commission orders

(A) Notices of intervention as full or limited participators in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 on or before July 22, 1991.

(B) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission who shall separately be served three copies of all documents.

(C) The Secretary shall cause this Notice and Order to be published in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 91–15517 Filed 6–28–91; 8:45 am]

BILLING CODE 7710–FW–M

Order Granting Motion for Extension and Explaining Procedural Matters; Erratum Notice

[Order No. 888]

Issued: June 18, 1991.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson.

In the matter of San Francisco Main Post Office, California 94101, Docket No. A91–4 (Paul A. Lovinger, et al., Petitioners).

June 25, 1991.

In FR Doc. 91–14921 appearing at pages 28780–28781 in the **Federal Register** of Monday, June 24, 1991, the following change should be made on page 28781:

In the second ordering paragraph, "A91–1" should be changed to "A91–4."

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 91–15516 Filed 6–28–91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 25, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("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:

Calgon Carbon Corporation
Common Stock, $.01 Par Value (File No. 7–6999)
Vivigen, Inc.
Common Stock, $.01 Par Value (File No. 7–7000)

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 July 17, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications 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. 91–15533 Filed 6–28–91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–29360; File No. SR–NASD–91–28]

Self-Regulatory Organizations: Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Designation of an Appeal Committee in the Uniform Practice Code

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solict comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Subtance of the Proposed Rule Change

The NASD is proposing to redesignate the "SOES Review Committee" as the "Market Operations Review Committee" and reflect that change in the Uniform Practice Code.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

The Association is proposing to redesignate the "SOES Review Committee" as the "Market Operations Review Committee" and reflect that change in Section 70 of the Uniform Practice Code ("UPC") regarding procedures for declaring a transaction void. Section 70 of the UPC specifies the procedures whereby members may obtain a ruling by the Association that a transaction involving the operation of a NASD system is null and void on the grounds that one or more of the terms of the transaction is clearly erroneous. If a member wishes to appeal such a determination, the current procedures call for the SOES Review Committee to hear the appeals. The NASD is now designating that appeal committee as the Market Operations Review Committee.

The NASD has redesignated the committee to more accurately reflect its operational character because the appeals heard by the Market Operations Review Committee encompass not only SOES-related appeals, but also cover the operations of other NASD operated systems such as SelectNet and ACT ("Automated Confirmation Transaction Service").

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "promote just and equitable principles or trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect mechanism of a free and open market."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor 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 Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal is "concerned solely with the administration of the self-regulatory organization." At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be sumnittted by July 22, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15530 filed 6–28–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29361; File No. SR–NASD–91–27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Service Charges for the Risk Management Function of the Automated Confirmation Transaction Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to Part IX of Schedule D of the By-Laws, Service Charges for the Automated Confirmation Transaction Service ("ACT"), to increase service charges for ACT risk management from $.02 per side to $.03 per side.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

The Association is proposing to amend the service charge for the risk management function of the ACT service. The ACT service, implemented in March 1990 for self-clearing firms and in October 1990 for clearing firms and their executing correspondent broker/dealers, is designed to capture trade information in close proximity to the time of the trade to compare and lock-in that data for same day submission to clearing. The risk management features of the ACT service include correspondent gross dollar thresholds for purchases and sales, trade file scan, end of day recap, on-line review (for computer interface clearing firms), single trade limit of $1,000,000 (with time for clearing firm review), and super cap calculations, along with alert and pre-alert messages when correspondents are approaching any of the applicable thresholds.[1]

The ACT risk management function serves approximately 900 introducing brokers and their clearing firms. These "indirect" clearing firms account for approximately 25% of trading activity as counted by number of sides submitted to clearing. With the addition of operational expenses attributable to risk management functions, the service charges for participants were orginally calculated as a fixed monthly fee of $15 per correspondent and a variable charge of $.02 per side.

The NASD is changing the variable charge to $.03 per side. This increase is necessary to achieve cost recovery because the original estimates used to develop the fee were based on data that failed to distinguish the volume of trades generated by large affiliates of clearing firms, such as correspondents that own the clearing firm and that have no need of ACT risk management services.

The NASD believes the proposed rule change is consistent with Section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The ACT service charges proposed in this filing have been formulated on the basis of the costs associated with developing and operating the risk management functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received; however the NASD discussed the fee adjustment with the SIA Clearing Firms Committee and they had no objections to the change.

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 Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal is "establishing or changing a due, fee, or other charge." At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[1] For a detailed description of the ACT risk management functions, *see* SR–NASD 89–25, Release No. 34–26991, dated June 29, 1989 and Amendments 2 and 3 to SR–NASD 89–25, Release No. 34–27229, dated September 9, 1989 and Release No. 34–27997, dated May 2, 1990.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-15531 Filed 6-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29362; File No. SR-NASD-91-30]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Service Fee for Connection of Second Monitor/Keyboard to a NASDAQ Workstation Unit

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the following is the full text of a proposed rule change by the NASD regarding a service fee for the connection of one separate monitor and keyboard to a personal computer ("PC") authorized for NASDAQ Workstation service ("Service"). The new fee will be published in Section 10 under Part IX of Schedule D to the NASD By-Laws. (Additions are italicized; deletions are bracketed.)

10. NASDAQ Workstation Service

* * * * *

Second monitor/keyboard attached to an authorized PC: $195/month

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 Staement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing a charge of $195/month for access to NASDAQ Workstation service through a separate CRT monitor and keyboard connected to an authorized PC device. This mode of ccess will be provided through a hardware device developed and marketed by an independent vendor. The device connects to the CRT monitor and keyboard outlets on a NASDAQ Workstation unit, and enables attachment of a second monitor/keyboard combination. Functionally, the hardware device splits the video signal from the NASD's processor causing both monitors to display identical information. The device also incorporates a timer to lock-out one keyboard while the other is being used. Thus, broadcast data requested through keystrokes on one keyboard will automatically appear on both screens. However, the linked keyboards cannot be used simultaneously. Because a single broadcast line supports a single PC's access to Service information—albeit with tertiary display capability on the linked monitors—the total functionality being provided is not equivalent to two PCs authorized for NASDAQ Workstation service. The proposed linkup will only be permitted on a one-for-one basis with respect to individual PCs authorized for NASDAQ Workstation service.

In formulating the proposed charge, the NASD considered the components of the existing $345 monthly charge for NASDAQ Workstation service. Of that amount, $195 covers receipt of NASDAQ Workstation service. The remainder, $150, covers network operating costs. The NASD concluded that the network component should not apply because the combination monitor/keyboard does not access the NASDAQ network independently. Rather, network access is achieved through the host PC and its line to the network. Further, the cost of that access is recovered through the monthly service charge assessed for the subscriber's NASDAQ Workstation unit. On the other hand, the combined monitor/keyboard provides the same degree of functionality, including data management and display capabilities, as the host PC. For this reason, the NASD has determined to levy the $195 Level ⅔ service charge for use of an additional monitor and keyboard.

The NASD believes the proposed rule change is consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor 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 Act and subparagraph (e) of Rule 19b-4 thereunder because the proposal is "establishing or changing a due, fee, or other charge." At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be availabe for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1991.

For the Commission, by the Division of Market regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15532 Filed 6–28–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18212; 811–4455]

Hudson Income Shares, Inc.; Application

June 24, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Hudson Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on June 14, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 22, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washingotn, DC 20549. Applicant, c/o DG Bank, 609 Fifth Avenue, New York, New York 10017–1021.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On November 5, 1985, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to section 8(b) of the 1940 Act. Applicant's securities are not registered under the Securities Act of 1933. Applicant had no more than 100 security holders and has never made a public offering of its securities.

2. Applicant was organized primarily to provide institutional investors organized in the Federal Republic of Germany with an investment subject to favorable tax treatment. Pursuant to a new income tax treaty between the United States and what was then the Federal Republic of Germany, these tax advantages were eliminated as of December 31, 1990. Upon losing the tax advantages, applicant's shareholders requested the redemption of all outstanding shares. Because of the redemptions, in April 1991, applicant's board of directors authorized the dissolution of applicant.

3. Pursuant to the liquidation, applicant's portfolio securities were sold through government securities dealers at market price without the payment of any brokerage commission.

4. On January 2, 1991, applicant distributed to its shareholders $8.97 per share, which represented all of applicant's assets on that date.

5. Applicant paid approximately $3,500 in legal and other expenses related to the liquidation.

6. Applicant is in the process of filing articles of dissolution with the state of Maryland.

7. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

8. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15534 Filed 6–28–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25337]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 21, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 15, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company, et al. (70–7862)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenburg Township, Berks County, Pennsylvania 19640 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, (collectively, the "GPU Companies"), electric public-utility subsidiary companies of General Public Utilities Corporation, a registered holding company, have filed an application pursuant to sections 9(a) and 10 of the Act.

By orders dated September 24, 1985 (HCAR No. 23841), January 7, 1987 (HCAR No. 24293) and February 25, 1988 (HCAR No. 24587), the Commission, among other things, authorized JCP&L to enter into a nuclear fuel lease agreement, and amendments thereto, with PruLease, Inc. ("PruLease"), an affiliate of The Prudential Insurance Company of America ("Prudential"), to provide for the acquisition of nuclear fuel and certain related services for the Oyster Creek nuclear generating station ("Oyster Creek").

By orders dated March 11, 1987 (HCAR No. 24339) and February 25, 1988 (HCAR No. 24588), the Commission, among other things, authorized the GPU Companies to enter into separate lease agreements with PruLease to provide for the acquisition of nuclear fuel and related services for use in their jointly owned Three Mile Island Unit No. 1 nuclear generating station ("TMI–1"). The GPU Companies own TMI–1 in the following percentages: Met-Ed—50%; JCP&L—25%; and Penelec—25%. Unrecovered acquisition costs for nuclear fuel, fuel assemblies and component parts ("Nuclear Material") and payments for related costs and services (collectively, "Acquisition Costs") under each of the Oyster Creek and TMI–1 lease agreements may not exceed $125 million outstanding for either lease at any one time. Under both the Oyster Creek and TMI–1 leases, PruLease initially acquired title to Nuclear Material from, and simultaneously leased it back to, the GPU Companies.

In order to restructure their fuel leasing arrangements, the GPU Companies propose to establish a nuclear fuel trust ("Fuel Trust") pursuant to a trust agreement ("Trust Agreement") which would be administered by an independent bank trustee ("Trustee"). The Fuel Trust would become the sole stockholder of two newly formed, nonaffiliated, corporations: Fuel Corp. 1 and Fuel Corp. 2 (collectively, the "Fuel Corporations"). Fuel Corp. 1 and Fuel Corp. 2 would acquire all of the Nuclear Material owned by PruLease under the present Oyster Creek and TMI–1 leases, respectively, with a purchase price equal to the unrecovered Acquisition Costs then outstanding under each respective lease. The Oyster Creek and TMI–1 leases would then be terminated and the GPU Companies would enter into new lease agreements with the Fuel Corporations.

To provide for the future acquisition of Nuclear Material for use at Oyster Creek and TMI–1, the Fuel Corporations and Prudential (or an affiliate thereof) propose to enter into separate floating and fixed rate loan agreements and security agreements pursuant to which each Fuel Corporation will issue and sell to Prudential (or an affiliate thereof) from time to time its promissory notes ("Notes"). The principal amount of the Notes outstanding at any one time may not exceed $125 million in the case of each Fuel Corporation. The Notes issued by each Fuel Corporation will be secured by the related lease (and payments made thereunder) and by the Nuclear Material relating to each lease. In addition, separate loan and security agreements will provide for the ability to establish a fixed interest rate on the Notes in amounts not to exceed $75 million for each of the Fuel Corporations.

During the term of the lease, each GPU Company would pay to the lessor a monthly rental payment consisting of (i) a British Thermal Unit charge ("BTU Charge"), based upon the anticipated rate of consumption of the fuel in the reactor and (ii) a lease rate ("Lease Rate"). To the extent that a GPU Company makes BTU Charge payments to the lessor under a lease, the amount of outstanding Acquisition Costs will be correspondingly reduced, thereby creating availability under the lease for the lessor to acquire additional Nuclear Material.

With respect to floating rate Notes, the Lease Rate, which will be based upon the unamortized cost of the Nuclear Material from time to time, will be the yield adjusted rate charged on 30-day dealer placed commercial paper, plus .70%.

The initial terms of the Oyster Creek and TMI–1 leases will be for two years, and subject to the satisfaction of certain conditions, each such lease may be extended annually thereafter.

Upon termination of a lease, the GPU Company which is a party thereto would be obligated, with certain exceptions, to pay to the lessor the stipulated casualty value of any Nuclear Material acquired by the lessor, which amount is designed to reflect the then unamortized cost of the Nuclear Material plus all other amounts which may be owed to the lessor.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15535 Filed 6–28–91; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration (Ruddick Corp., Non-cumulative, Voting $.56 Convertible Preference Stock, $5.00 Par Value) File No. 1–6905

June 25, 1991.

Ruddick Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

First, according to the Company, there are relatively few holders of the Non-cumulative, Voting $.56 Convertible Preference Stock ("Preference Stock"). Currently there are only 155,472 shares of the Preference Stock outstanding, and these shares are held of record of only 722 shareholders. Second, trading in the Preference Stock has been minimal. From January 1, 1991 through May 31, 1991, there were only four transactions in the Preference Stock, involving in the aggregate less than 1,000 shares. Finally, the Preference Stock currently is convertible into the Company's Common Stock, $1.00 par value per share, for which there is an active market.

Taking into account the foregoing, the Company has determined that to delist the Preference Stock would result in minimal, if any, inconvenience to the shareholders of such stock. In light of the extra cost required to maintain the listing of the Preference Stock on the Amex, the Company has determined it to be in the best interest of the Company to delist the Preference Stock.

Any interested person may, on or before July 17, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-15536 Filed 6-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18211; 812-7732]

WNC Housing Tax Credit Fund III, L.P. et al; Application

June 21, 1991.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: WNC Housing Tax Credit Fund III, L.P., a California limited partnership (the "Partnership") and its general partner, WNC Tax Credit Partners, L.P., a California limited partnership (the "General Partner").

RELEVANT ACT SECTION: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the Act and the rules thereunder to permit the Partnership to invest in limited partnerships that will engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on May 30, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o WNC Tax Credit Partners, L.P., 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626-3416.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Partnership was formed under the California Revised Limited Partnership Act on May 10, 1991. It proposes to invest in limited partnerships ("Local Limited Partnerships") that will engage in the ownership and operation of housing (apartment complexes) for low and moderate income persons. The Partnership's investment objectives are to provide current tax benefits in the form of tax credits to qualified investors to offset their Federal income tax liabilities, to preserve and protect the Partnership's capital and to provide cash distributions from sale or refinancing transactions.

2. On May 30, 1991, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer 15,000 units of limited partnership interest at $1,000 per unit, with a minimum investment of $5,000 per investor. Purchasers of units will become limited partners ("Limited Partners") of the Partnership.

3. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership will normally acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships. In certain cases, however, at the discretion of the General Partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. In such cases, the Partnership will normally acquire at least a 50% interest in the profits, losses and tax credits of the Local Limited Partnership.

4. Each Local Limited Partnership Agreement will provide the Partnership with certain voting rights, including the right to replace the local general partner on the basis of performance and discharge the local general partner's obligations, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership and to approve or disapprove amendments to the Local Limited Partnership Agreement materially and adversely affecting the Partnership's investment.

5. The Partnership will be controlled by the General Partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. Limited Partners owning a majority of the units will have the right to amend the Partnership Agreement (subject to certain limitations), to remove the General Partner and elect a replacement therefor and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

6. All proceeds of the public offering of units will initially be placed in an escrow account with American Interstate Bank (the "Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in accordance with instructions from the general Partner in short-term United States Government securities, securities issued or guaranteed by the United States Government and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions, funds in escrow will be released to the Partnership pending investment in Local Limited Partnerships. The Partnership, however, intends to apply such proceeds to the acquisition of Local Partnership interests as soon as possible.

Applicants' Legal Analysis

1. Applicants request that the Partnership be exempted from all provisions of the 1940 Act under section 6(c), which provides that the SEC may exempt any person, security or

transaction from any provision of the 1940 Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the exemption requested is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1958 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership from provides the only means of bringing equity capital into such housing, particularly because public investors typically consider investment in low and moderate income housing programs as involving greater risk than real estate investments generally; (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has agreed to invest in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with certain fundamental provisions of the Act; and (e) real estate limited partnerships such as the Partnership cannot comply with the asset coverage requirements in Section 18 of the Act. Applicants further assert that the relief requested will permit the continued use of the two-tier limited partnership entity to effectuate the public policy expressed in the United States housing laws.

3. The Partnership will operate in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The final paragraph of Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier partnerships that engage in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons.* * *" The release lists two conditions designed for the protection of investors that must be satisfied in order to qualify for such an exemption: (a) "limited partnership interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable, and [(b)] requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

4. Any subscription for units must be approved by the General Partner, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. Such investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings and automobiles) of at least $35,000 and an annual gross income of at least $35,000, (b) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000 or (c) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (a) or such net worth as set forth in clause (b). The prospectus also contains suitability standards established by certain states for purchasers of units within their respective jurisdictions. Transfers of units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor.

5. The Partnership Agreement and prospectus contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus and no compensation will be payable to the General Partner or any of its affiliates unless so specified. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length; however, applicants represent that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Further, the Partnership believes that such compensation meets all applicable guidelines necessary to permit the units to be offered and sold in California and in states that adhere to the guidelines comprising the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–15537 Filed 6–28–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on July 16, 1991, at 8 a.m. Arrange for oral presentations by July 9, 1991.

ADDRESSES: The meeting will be held in the Boardroom, Air Transport Association of America, 5th floor, 1709 New York Avenue, NW., Washington, DC 20006–5206.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on July 16, 1991, in the Boardroom, Air Transport Association of America, 1709 New York Avenue, NW., Washington, DC. The agenda for this meeting will include:

(1) A briefing from the Chair of the Airworthiness Assurance Task Force, which is investigating the adequacy of the agency's existing airworthiness assurance efforts in fatigue and corrosion control (but not the related research and development projects). The Chair will report on the organization and membership of the task force and any subelements, the tasks completed thus far, the tasks planned for the future and the subelement responsible, and the timetable for completion of those tasks.

(2) A briefing from the Chair of the Systems Review Task Force, which is investigating what are feasible

improvements to the backup flight control systems of existing and future aircraft which have fully powered control systems; and whether engine containment structure designs in present use today are the best that can be implemented, or are improvements that are practicable for present and future designs. The Chair will report on the organization and membership of the task force and any subelements, the tasks completed thus far, the tasks planned for the future and the subelement responsible, and the timetable for completion of those tasks.

(3) A discussion of the two presentations, consideration of new tasks resulting from those discussions, and the formation or modification or working groups to perform existing or new tasks identified during the discussion.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 9, 1991, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT**."

Issued in Washington, DC, on June 25, 1991.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-15510 Filed 6-28-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 24, 1991.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0183.

Form Number: 4789.

Type of Review: Extension.

Title: Currency Transaction Report.

Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 788,871.

Estimated Burden Hours Per Response: 24 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 2,283,624 hours.

OMB Number: 1545-1008.

Form Number: 8582.

Type of Review: Revision.

Title: Passive Activity Loss Limitations.

Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassibe income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. Worksheets 1 and 2 are used to figure the amount to be entered on lines 1 and 2 of Form 8582, and worksheet 1 through 6 are used to allocate the loss allowed back to individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents: 4,500,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—1 hour, 5 minutes
Learning about the law or the form—1 hour, 46 minutes
Preparing the form—1 hour, 34 minutes
Copying, assembling, and sending the form to IRS—20 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 21,840,000 hours.

OMB Number: 1545-1196.

Form Number: 8820.

Type of Review: Extension.

Title: Returns Relating to Certain Changes in Corporate Control or Capital Structure.

Description: These proposed regulations concern the reporting requirements of section 6043(c) of the Internal Revenue Code. They require that a corporation file a return on (new) Form 8820, generally, if control of the corporation is acquired by any person or if the corporation has a substantial change in capital structure.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

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. 91-15518 Filed 6-28-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 25, 1991.

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 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0047.

Form Number: IRS Form 990 and Schedule A (Form 990).

Type of Review: Revision.

Title: Return of Organization Exempt From Income Tax Under Section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or Section 4947(a)(1) Charitable Trust.

Description: Form 990 is needed to determine that IRC section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemptions. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Respondents: Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 327,953.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990	Schedule A
Recordkeeping	83 hrs., 28 min.	39 hrs., 56 min.
Learning about the law or the form	14 hrs., 37 min.	8 hrs., 44 min.
Preparing the form	19 hrs., 25 min.	9 hrs., 46 min.
Copying, assembling, and sending the form to IRS	48 min.	0.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 46,203,008 hours.

OMB Number: 1545–0890.

Form Number: IRS Form 1120–A.

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.

Estimated Number of Respondents/ Recordkeepers: 285,777.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—43 hrs., 17 min.
Learning about the law or the form—24 hrs., 24 min.
Preparing the form—42 hrs., 56 min.
Copying, assembling, and sending the form to IRS—4 hrs, 50 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 32,810,057 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. 91–15519 Filed 6–28–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 25, 1991.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1068.

Form Number: None.

Type of Review: Extension.

Title: Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986.

Description: An election is required to exclude from the computation of subpart F income, income subject to rate of tax imposed by a foreign country that is greater than the rate imposed by the U.S. Recordkeeping is required to exclude from personal holding company income gains or losses from qualified commodities, hedging transactions of foreign currency gains or losses from qualified business transactions or qualified hedging transactions. In order to allow taxpayers to avoid that recordkeeping requirement, an election is provided to treat all foreign currency gains or losses attributable to certain transactions as foreign personal holding company income.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeeper: 26,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 minutes.

Frequency of Response: Other (One-Time Currency Election).

Estimated Total Reporting/ Recordkeeping Burden: 49,417 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. 91–15520 Filed 6–28–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 25, 1991.

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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0123.

Form Number: IRS Form 1120), Schedule D (Form 1120), and Schedule PH (Form 1120).

Type of Review: Revision.

Title: U.S. Corporation Income Tax Return (1120); Capital Gains and Losses (Schedule D); and U.S. Personal Holding Company Tax (Schedule PH).

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: 2,834,748.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1120	Schedule D	Schedule PH
Recordkeeping	68 hrs., 10 min.	6 hrs., 28 min.	15 hrs., 19 min.
Learning about the law or the form	39 hrs., 51 min.	3 hrs., 41 min.	6 hrs., 6 min.
Preparing the form	70 hrs., 9 min.	6 hrs., 45 min.	8 hrs., 29 min.
Copying, assembling, and sending the form to IRS	8 hrs., 2 min.	48 min.	32 min.

Frequency of Response: Annally.

Estimated Total Reporting/ Recordkeeping Burden: 467,621,092, 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. 91–15558 Filed 6–28–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Intent To Prepare Environmental Impact Statement

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the area of Dallas/Ft. Worth, TX.

The cemetery site is projected to require approximately 160 acres, providing space for approximately 185,000 gravesites, interment service shelters, administrative and maintenance buildings, roads, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetery.

DATES: Written comments must be received on or before July 31, 1991. Comments will be available for public inspection until August 12, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, until August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Landscape Architectural Service (088B4), at (202) 233–8453.

SUPPLEMENTARY INFORMATION: An EIS is required because the scope of the proposed project exceeds VA threshold for an EIS established in 38 CFR part 26, Environmental Effects of VA Actions. In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified four possible site alternatives for the proposed national cemetery within a 50 miles radius of the I–30 and highway 360 intersection. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal Agencies are invited to participate in the scoping process. VA will use any comments it received to further identify and clarify significant environmental issues. Local area newspapers will announce the scoping meetings for the project.

Dated: June 25, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91–15550 Filed 6–28–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 126
Monday, July 1, 1991

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).

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:21 p.m. on Tuesday, June 25, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of failed thrift institutions, (2) the sale of assets and (3) corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan Jr. (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Dean S. Marriott acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, N.W., Washington, D.C.

Dated: June 26, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–15692 Filed 6–27–91; 11:31 am]

BILLING CODE 6714-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 3, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Infant Cushions: Notice of Proposed Rulemaking*

The Commission will consider a Notice of Proposed Rulemaking addressing the risk of injury and death presented by infant cushions.

2. *Bicycle Helmet Petition CP 90–1*

The staff will brief the Commission on petition CP 90–1 from the Consumer Federation of America and other member organizations of the National Safe Kids Coalition which requests that the Commission set mandatory safety standards for bicycle helmets for children and adults.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: June 26, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–15741 Filed 6–27–91, 2:18 am]

BILLING CODE 6355-01-M

federal register

Monday
July 1, 1991

Part II

Environmental Protection Agency

40 CFR Part 28

Non-APA, Consolidated Rules of Practice for Administrative Assessment of Civil Penalties; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 28

[FRL-3693-3]

Non-APA, Consolidated Rules of Practice for Administrative Assessment of Civil Penalties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes non-APA, consolidated rules of practice for its administrative assessment of civil penalties under (1) sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act (CWA), 33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i) [1]; (2) section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9609(a), for violations of provisions specified in section 109(a) of CERCLA; (3) certain actions under sections 325(b)(1), (c)(1), (c)(2) and (d) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d); and (4) civil penalties under part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h, in penalty-only orders under this part or in penalty/compliance orders under this part. Although the substantive requirements of the various statutes differ, each authorizes the Administrator to assess civil penalties without recourse to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* EPA is taking today's action to consolidate and harmonize in a single regulation the various procedural guidances and regulations which it presently employs in response to Congressional direction to provide streamlined procedure for the assessment of certain administrative penalties, and to establish procedures for Class I administrative penalty assessment pursuant to section 4301(b) of the Oil Pollution Act of 1990, which amends section 311(b)(6) of the Clean Water Act. The authority to assess administrative penalties was granted and made immediately effective under the Clean Water Act by the Water Quality Act of 1987, effective February 4, 1987, and the Oil Pollution Act of 1990, effective August 18, 1990; under the Safe Drinking Water Act by the Safe Drinking Water Act Amendments of 1986, effective June 19, 1986; and under CERCLA and EPCRA by provisions of the Superfund Amendments and Reauthorization Act (SARA), effective October 17, 1986. Non-APA administrative penalty authority is granted to the Administrator explicitly by sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act, 33 U.S.C. §§ 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i), and section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c). In the case of CERCLA and EPCRA, the non-APA authority is implicit because Congress specifically prescribed the use of the Administrative Procedure Act for the Administrator's assessment of Class II penalties under CERCLA and EPCRA but was silent as to procedures to be used to assess other civil penalties.

Congress has expressed its preference for streamlined administrative penalty procedures designed to assure protection of basic constitutional liberties, which also advance the goals of compliance with environmental requirements through the deterrent effect of rigorous and efficient enforcement actions. See, *e.g.*, Sen. Rep. 99–50, 99th Cong., 1st Sess. 26 (1985), reprinted in A Legislative History of the Water Quality Act of 1987, volume 2, at 1448.

DATES: Comments on this proposed rule must be submitted on or before August 30, 1991.

ADDRESSES: Persons may mail comments on this proposed rule to David Drelich or Elyse DiBiagio-Wood, Office of Enforcement, Water Division (LE–134W), room 3109, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The administrative record of this rulemaking is available and persons may inspect comments at that address.

FOR FURTHER INFORMATION CONTACT: David Drelich (202–382–2949) or Elyse DiBiagio-Wood (202–475–8187), Office of Enforcement, Water Division (LE–134W), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On February 4, 1987, Congress amended section 309 of the CWA, 33 U.S.C. 1319, by passage of section 314 of the Water Quality Act, Public Law 100–4, to authorize the Administrator to assess civil penalties for violations of the CWA. The amendments to Section 309 created a new subsection 309(g) and established two classes of administratively assessed civil penalties, which differ with respect to maximum assessment and prescribed procedure.

CWA Class II administrative penalties may not exceed $125,000 and are required by law to be assessed in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 554. Therefore, the Agency has chosen to use 40 CFR Part 22—EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits—for the administrative assessment of Class II civil penalties. Class I administrative penalties may not exceed $25,000. An assessment action under Class I must provide the respondent a reasonable opportunity to be heard and to present evidence, but is not subject to sections 554 and 556 of the APA. Class I penalties under the CWA are presently assessed in accordance with Procedural Guidance for Class I Proceedings, which was published in the **Federal Register.** See 52 FR 30730 (August 17, 1987). The text of the procedural rules proposed today which relate to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), will in the near future supersede as guidance the 1987 procedural guidance for CWA Class I actions.

On August 18, 1990, the President signed into law the Oil Pollution Act of 1990, Public Law 101–380, 104 Stat. 484, which had been passed unanimously by both houses of Congress. Section 4301(b) of the Act amended section 311(b)(6) of the Clean Water Act by replacing the existing text with Class I and Class II penalty procedures drawn from section 309(g) of the Act, as created by the Water Quality Act of 1987. The major differences between section 309(g) and new section 311(b)(6) are that Class I proceedings under section 311(b)(6) are not subject to participation by public commenters, that section 311(b)(6) actions are not subject to a State consultation requirement, and that both classes of proceedings are available both to the Administrator and the Secretary of the department in which the Coast Guard is operating. The text of the procedural rules proposed today which relate to section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), will in the near future be followed as guidance by the Environmental Protection Agency as the penalty assessment procedure pending the Administrator's formal promulgation of regulations.

On June 19, 1986, the Safe Drinking Water Act was amended to provide for the administrative assessment of civil penalties under both Part B [the Public Water Supply Program (PWS)] and Part

[1] Code references to 33 U.S.C. 1321 anticipate codification of elements of the Oil Pollution Act of 1990, Public Law No. 101–380, 104 Stat. 484, at that location.

C [the Underground Injection Control Program (UIC)] of the SDWA. Public Law 99–339, 100 Stat. 642 (1986).[2]

Section 1423(c) of the SDWA, 42 U.S.C. 300h–2(c), which applies to underground injection activities, provides for administrative assessment of civil penalties of not more than $5,000 for each day of violation of an applicable UIC program requirement regarding oil and gas production and recovery, up to a maximum of $125,000. That subsection also authorizes administrative penalties of not more than $10,000 per day for each day of violation of other applicable UIC program requirements, up to the same maximum of $125,000. While this section of the Act requires notice and an opportunity to be heard, Congress specifically provided that these hearings are not subject to section 554 and 556 of the APA. The provisions of this portion of the SDWA have been implemented under the statute and implementing Agency guidance issued November 28, 1986.

SARA became law on October 17, 1986. Title I of SARA amended CERCLA by adding Section 109, 42 U.S.C. 9609, which authorizes the President to assess civil penalties for violations of specified provisions of CERCLA. Title III of SARA, 42 U.S.C. 11001 et seq., is also known as EPCRA. Section 325(b) of EPCRA, 42 U.S.C. 11045(b), authorizes the Administrator to assess civil penalties for violations of section 304 of EPCRA, 42 U.S.C. 11004. Section 325(c)(1) of EPCRA, 42 U.S.C. 11045(c)(1), authorizes the Administrator to assess civil penalties for violations of sections 312 and 313 of EPCRA, 42 U.S.C. 11022 and 11023.

Section 109 of CERCLA, 42 U.S.C. § 9609, and section 325(b) of EPCRA, 42 U.S.C. 11045(b), establish two classes of administrative penalties, which differ with respect to procedure and maximum assessment. The provisions for Class I penalties allow for a maximum penalty of $25,000 per violation. The provisions for Class II penalties authorize a maximum penalty of $25,000 per day of violation and a maximum penalty of $75,000 per day of violation for a second or subsequent violation. Congress explicitly subjected these Class II proceedings to section 554 of the APA, 5 U.S.C. 554, and consequently EPA administers these proceedings under 40 CFR Part 22, and shall not administer them under these proposed rules.

Section 325(c) of EPCRA, 42 U.S.C. 11045(c), is silent as to the type of administrative hearing procedures to be employed but authorizes penalties of up to $25,000 for each violation under section 325(c)(1), and $10,000 for each violation under section 325(c)(2). Under both provisions, separate penalties may be assessed for each day of violation. Section 325(d) of EPCRA, 42 U.S.C. 11045(d), provides for the assessment of $25,000 per claim for frivolous trade secret claims.

Today's proposed rule will apply to Class I administrative civil penalty proceedings under section 109(a) of CERCLA, 42 U.S.C. 9609(a), and section 325(b)(1), (c)(1), (c)(2), and (d)(1) of EPCRA, 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d)(1). It will apply to violations of sections 304, 311, 312, 322(a)(2), 323(b), 325(c)(2) and 325(d) of EPCRA, 42 U.S.C. 11004, 11021, 11022, 11042(a)(2), 11043(b), and 11045(c)(2) and (d), respectively. At present, the Agency pursues violations of the listed sections of EPCRA pursuant to 40 CFR part 22. The Agency solicits comments on whether it should (1) continue its exclusive use of part 22 for such EPCRA violations; (2) use part 28 procedures except for violations of section 313 of EPCRA, 42 U.S.C. 11023 (as provided by this proposal); or, (3) exclusively use part 28 for such EPCRA violations.

EPA is presently administering these statutes through various guidances and regulations. Although this approach is legally effective, the Agency recognizes the advantages, both to the regulated community and to itself, of appropriately consolidating and harmonizing in a promulgated regulation its procedural rules for non-APA enforcement proceedings. Use of a single set of "Class I" regulations will reduce confusion by Agency decisionmakers and enforcement staffs, provide the regulated community with an essentially uniform set of procedural rules, and conform to Congress' and the Agency's desire to employ expedited penalty assessment procedures. The resulting familiarity with the proceedings by all participants should provide for more timely and efficient proceedings. A uniform administrative regulation helps assure procedural fairness through a more consistent administration of fundamentally similar statutory provisions.

The Agency recognizes, however, the need for certain distinctions in these regulations based upon varying statutory or program requirements. The proposed regulation incorporates these distinctions. The Safe Drinking Water Act and section 309(g) of the Clean Water Act, for example, authorize interested persons to participate in administrative penalty proceedings, while CERCLA, EPCRA, and section 311(b)(6)(B)(i) of the CWA do not. The proposed rules therefore include public participation rights for SDWA and CWA 309(g) proceedings alone. See, *e.g.*, §§ 28.2(g), 28.20(c) and 28.26(g)(5).

EPA also recognizes that the administrative imposition of penalties may affect constitutionally protected interests of those against whom actions have been taken, and has taken precautions to ensure that individuals subject to a finding of liability for a civil penalty will have all the protections that due process of law requires. These include, for example, an impartial Presiding Officer, the right to a hearing on liability with a right of cross-examination, and a final Agency action solely based on the administrative record and applicable law. In the interest of streamlining the administrative proceeding, these rules contain short time deadlines; limit the length of legal arguments; limit the scope and time for administrative discovery; ban administrative appeals; and, in Safe Drinking Water Act and Clean Water Act 309(g) actions, limit the participation of commenters.

EPA believes that this proposal provides all of the procedure necessary to meet constitutional due process requirements under the leading Supreme Court case, *Mathews* v. *Eldridge,* 424 U.S. 319 (1976). In that case, the Supreme Court set out a three-part test for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest by the government meets the due process requirements of the Fifth Amendment. The *Mathews* test involves balancing the magnitude and nature of the individual interest at stake, the benefit of additional procedures in reducing the risk of erroneous deprivation of that interest, and the governmental interest in not providing such additional procedures. Although the procedures proposed today streamline the adjudicatory process provided for analogous administrative hearings under the APA, the proposed rules eliminate none of the constitutional elements of such hearings. These procedures allow a full opportunity for the person subject to an administrative penalty to review and challenge the evidence of violation and degree of sanction. Since these procedures allow for a complete, though

[2] Within part B, section 1414(g)(3)(B) of the SDWA, 42 U.S.C. 300g–3(g)(3)(B), which applies to drinking water suppliers, provides for a maximum administrative penalty assessment of $5,000 for the violation of a PWS compliance order and specifically requires notice and an opportunity for a hearing in accordance with the APA. This provision is therefore administered under 40 CFR part 22, and is not subject to these proposed rules.

streamlined, adjudication, there would be little benefit to the respondent in more extensive or attenuated procedures, but more than a little cost to the Agency and the public.

EPA has tailored its procedures here for use in the less complex cases Congress intended would be subject to expedited administrative penalty proceedings. Not only did Congress indicate a strong public interest in streamlined administrative penalty proceedings, as discussed above, but EPA also anticipates issuing an increasing number of orders as part of its enforcement efforts under these new authorities. As a result, there may be a potentially dramatic increase in the number of these hearings. Subjecting all of these actions to the more traditional, APA-style adjudications would enormously increase the costs and personnel time incurred for such hearings and cause significant delays. It would decrease the important deterrent value of these enforcement efforts and potentially cripple enforcement efforts Agency-wide by overwhelming the Agency's Administrative Law Judges. In response to these concerns, today's proposal provides for several innovative procedures. Further, the Agency does not expect it will be able to draw its Presiding Officers from the existing ranks of EPA's Administrative Law Judges. Presiding Officers under this rule are to be neutral Agency attorneys, but not necessarily Administrative Law Judges. See § 28.2(n). Establishing a supplementary corps of Agency decisionmakers will enable EPA to conduct many more administrative penalty actions than is presently possible.

Therefore, under the *Mathews* criteria, these proposed procedures provide all the process due for assessment of administrative penalties under the new authorities.

Two aspects of these proposed rules deserve special mention. First, the Agency's tentative decision not to entertain comments on the recommended decision was reached after reviewing the applicable judicial decision, discussed below, and after carefully balancing the interests of the parties and the Agency in having an additional comment opportunity against the expressed intent of Congress to streamline the administrative process for the types of violations covered by these rules. See S. Rep. No. 50, 99th Cong., 1st Sess., cited above, and H. Rep. 962, 99th Cong., 2d Sess. 207 (October 3, 1986) (regarding section 109 of CERCLA, 42 U.S.C. 9609).

An examination of existing case law disclosed only one case, *Koniag, Inc., the Village of Uyak* v. *Andrus*, 580 F.2d 601 (D.C. Cir.), *cert. denied*, 439 U.S. 1052 (1978), which suggests that due process requires that the parties be permitted to submit briefs on recommended administrative decisions before a final decision is rendered. The Agency concluded this case is distinguishable, however, on both the facts and applicable law.

The *Koniag* case involved a decision by the Secretary of the Interior as to the eligibility of a native Indian tribe to assert claims to traditional Indian lands. A decision by the Secretary of Interior denying the Indians eligibility to claim property was rendered without giving the Indians any access to two intermediate recommended decisions and despite explicit Congressional direction for tribal participation in the Secretary's determination. Under today's proposal, EPA will publish the Presiding Officer's recommended decision at the time of its transmission, and is following a general Congressional mandate to establish expedited enforcement procedures.[3] In *Koniag*, the statute under which the rights of the Indians to assert claims to property was being determined did not prescribe any procedures for conducting the hearings but did prescribe that a decision should be reached with "maximum participation by Natives in decisions affecting their rights and property." 580 F.2d at 609. Under the facts of that case and applicable Indian law, and in the absence of congressional authorization to the contrary, the court held that the Indians should be accorded due process in accordance with the APA, which provides for interim appeals.

Unlike Interior's practices described in Koniag, the rules proposed today are in response to explicit or implicit statutory direction to conduct hearings which are not subject to section 554 or 556 of the APA. In addition, the property interest being protected under the two laws are quite different. In *Koniag*, the Secretary's decision to deny eligibility prevented the Indians from laying claim to their aboriginal lands. The purpose of the procedures proposed today, however, is to determine appropriate liability for violations of environmental laws.

There does not appear to be any inconsistency with the *Koniag* case or denial of due process under these rules. Under the proposed rules, Agency decisions must be based on the administrative record. The rules provide ample opportunity for the parties to introduce relevant factual and legal information into the administrative record during the conduct of an action, require that the Presiding Officer's recommended decision contain findings of fact and conclusions of law based on the record and that the decision be made public. § 28.27(b). The proposed rules have stringent neutrality requirements for the Presiding Officer at § 28.4(c), and as a further check on the exercise of his authority allow either party to request his replacement if his conduct exceeds permissible boundaries. See § 28.13(a). The recommended decision is public and the Regional Administrator must, pursuant to § 28.28(a), either adopt the recommended decision, or write a different decision which contains both his findings of fact and conclusions of law based on the record and explains why he rejected the Presiding Officer's recommended decision. This procedure fully protects the respondent's ability to appeal the final Agency action to federal court, based on the administrative record (which includes the recommended decision) and applicable law. See sections 309(g)(8)(A) and 311(b)(6)(G) of the Clean Water Act, 33 U.S.C. 1319(g)(8)(A) and 1321(b)(6)(G); section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6); section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4); and section 325(f) of EPCRA, 42 U.S.C. 11045(f).

Nevertheless, because the issue requires a balancing between the benefits of an additional comment opportunity and the intent of Congress for an expedited procedure, the Agency requests comments on adding a short comment opportunity on the Presiding Officer's decision. To be consistent with the other sections of the regulations, which expedite decisionmaking, this opportunity should be limited in time and scope. First, comments by any party regarding the Presiding Officer's recommended exercise of the Agency's discretion, would be limited to the record and available remedies of law. Second, the comments would be made in a specific time (*e.g.*, ten days) after the recommended decision, and be brief (*e.g.*, five pages or less).

Second, to streamline the administrative process, EPA has decided to prohibit interim, administrative appeals. EPA believes

[3] Further, under § 28.26(k) of the proposed rules, the Presiding Officer may solicit from the parties "proposed recommended findings of fact and conclusions of law," and such submissions are made available to the Regional Administrator pursuant to §§ 28.2(b)(9) and 28.27(a)(2). Compare 580 F.2d at 608, n.5 ("[I]t appears that the Secretary did not even see the proposed findings of fact submitted by the villages to the administrative law judges."

that no respondent would be unconstitutionally prejudiced by this reform. Any appeal to the Administrator of a Regional Administrator's decision would be based on the administrative record and applicable law, and argue that the Regional Administrator acted illegally or outside his discretion. Those are the precise grounds available to any respondent in a judicial appeal under applicable law. Consequently, the Agency's prohibition of administrative appeals merely eliminates an appellate redundancy—the sequential availability of the same appeal before the Administrator and a district court.

The Agency considered, but rejected, explicitly authorizing the Presiding Officer to take the final Agency action, without recourse to a recommended decision or consultation with any other Agency officer. The Agency has concluded that the procedure it proposes will provide a clearer record of decision, and that the appropriate Agency decisionmaker in significant penalty actions should be the Regional Administrator or his delegate. These rules do not explicitly prohibit a Regional Administrator from delegating his authority to take a final Agency action in an action conducted under this part to any other neutral officer, including the Presiding Officer, but the Agency does not expect such a delegation to occur in significant penalty actions.

EPA is not changing the scope of its Consolidated Rules of Practice (40 CFR part 22). In programs under part 22, either the underlying statute or existing practice provides the basis for the use of the more traditional, APA-based procedures. For the programs affected by today's proposal, however, the Agency believes that its new approach, which provides a greater emphasis on settlement and the finality of Regional decisions, will carry out Congressional intent in the enforcement of the environmental laws.

Many of the provisions of this proposal interrelate, such as the section on prohibited communication, definition of the administrative record, and prohibition of administrative appeals. These proposed regulations should therefore be read as a whole, not as a collection of distinct and unrelated sections.

SECTION-BY-SECTION ANALYSIS

Subpart A—General Provisions

Section 28.1 Purpose and Scope

This section describes the purpose of the rules the Agency proposes today, which is to set forth procedures for the timely and efficient initiation and administration of administrative orders under the several referenced statutory provisions. EPA believes that this is consistent with the aim of Congress to establish expedited or informal administrative enforcement procedures under these provisions. See Sen. Rep. 99–50, 99th Cong., 1st Sess. (1985), reprinted in A Legislative History of the Water Quality Act of 1987, volume 2, at 1448 (Section 309(g) of the Clean Water Act); Sen. Rep. 99–56, 99th Cong., 1st Sess. (1985), at 17–18 (Safe Drinking Water Act); and Sen. Rep. 99–11, 99th Cong., 1st Sess. (1985) at 9 (CERCLA). To that end, the Agency proposes to adopt procedures within these proposed rules, such as limitations on documents and prehearing exchanges, various deadlines, and the unavailability of administrative appeals, that will provide a speedy and efficient resolution to actions taken under this proposed part.

Nothing in this proposed part affects the right of the Agency to take appropriate administrative action, such as requiring information, making inspections, or issuing compliance orders, or initiating civil or criminal actions where authorized by law, or taking any other lawful action.

Section 28.2 Definitions.

The definitions section is comprehensive and exclusive for those terms it defines. The Agency consciously chose not to employ the usual method of saying the defined word "includes" or "includes but is not limited to." Consequently, the definitions for "Administrative record" and "Public notice" are long and detailed but, like other definitions provided in the rule, exclusive. Each definition is as specific as is necessary to employ it effectively within the proposed part. "Person," although not specifically defined by these proposed regulations, is understood by the Agency to have the meaning provided for that term by applicable law.

(a) *Administrative complaint.* In each action initiated under these proposed procedures, the administrative complaint must state with reasonable specificity the nature of the alleged violations in order to ensure that the respondent receives fair notice. The complainant must propose a penalty as authorized by the applicable law. This requirement does not mean that an administrative complaint must name a sum certain as requested relief; it does mean that a complainant may not request more in penalties than is authorized by the applicable statute. In actions under the Safe Drinking Water Act in which the complainant is seeking compliance as well as penalties, the administrative complaint may also propose a reasonable time for compliance. In certain SDWA actions, however, such as failure to provide information or monitor an injection well, it is inappropriate for an administrative complaint to provide additional time for compliance with the law. Finally, in order to ensure the regularity of Agency administrative enforcement practice and as a matter of sound administrative practice, this definition requires a certification of the legal sufficiency of the administrative complaint by Agency counsel.

The Agency considered, but rejected, the use of the term "proposed order" instead of "administrative complaint." Section 309(g)(2)(A)(1) of the Clean Water Act, 33 U.S.C. 1319(g)(2)(A)(1), refers to a "proposed order," as does section 1423(c)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(3)(B). However, because constitutionally protected interests are at stake in these proceedings, EPA does not believe that it should purport to make "findings" in an order before it has provided the respondent with an opportunity for a hearing on liability. In an administrative complaint, the enforcement staff of the Agency makes allegations as to liability, and (except in certain consent proceedings) only after the respondent's opportunity for a hearing regarding liability may a neutral Agency official make any "findings" of violative conduct. Consequently, although two statutes refer to a "proposed order," EPA believes that the initiating document in an action under this part is more appropriately styled an "administrative complaint." The Agency notes that in the Class I provisions of the Oil Pollution Act of 1990, Congress dropped the reference to "proposed order" in favor of a reference to a "proposal to assess [a] penalty." Section 4301(b) of Public Law No. 101–380.

(b) *Administrative record.* The Agency proposes a definition of administrative record sufficiently comprehensive to include all material information required by the Regional Administrator to take a final Agency action to a decision under this part. A document is not and cannot be part of the administrative record unless it is filed with the Hearing Clerk and fits one of the criteria provided by paragraphs (1) through (18) of this subsection.[4]

[4] In certain Clean Water Act and Safe Drinking Water Act cases, a proposed consent order and accompanying written explanation are lodged with the Hearing Clerk pursuant to § 28.22(b) of these proposed rules—not filed—and therefore do not meet the filing criterion established in this

Continued

Parties, commenters, or other persons may not add documents to the administrative record at will. Except in the case of a proposed consent order, documents nominated or submitted by a party or any other person to the Hearing Clerk do not, by that act alone, become part of the administrative record. If a participant fails to meet a deadline for the submission of a document for inclusion in the administrative record, the late submission is excluded from the administrative record. See §§ 28.2(b) (9) and (15) and 28.4(b)(10). The Agency is proposing to limit burdensome submissions and unsolicited pleadings and legal arguments in actions under this part. See, *e.g.*, § 28.8 (Limitations on written legal arguments and statements). The limitations and restrictions, which are designed to improve the speed and efficiency of hearings conducted under this proposed rule, may not be circumvented by parties flooding the record with voluminous documents. It will, however, be possible for a person to add a document into the administrative record if, pursuant to paragraph (15), the Presiding Officer finds it relevant to the action and not otherwise excluded from the record by the limitations of this part.

Under § 28.16(e) of the proposed rule, appropriate Agency staff shall open the administrative record "upon issuance of the administrative complaint." Except as provided by § 28.17 of this proposal, documents filed with the Hearing Clerk are available to the public for inspection and copying, and in Clean Water Act and Safe Drinking Water Act actions the Agency is proposing to provide notice of their availability according to the requirements of §§ 28.2(q)(11) and 28.16(d) of this part. Documents concerning an action that are not filed with the Hearing Clerk remain outside the disclosure rules of § 28.17 of this part, but may remain subject to the Freedom of Information Act and the applicable restrictions referenced in § 28.17. The administrative record will be certified by the Presiding Officer at the time of the transmission of a recommended decision. § 28.27(a)(1). The Regional Administrator files with the Hearing Clerk any subsequent additions to the record pursuant to § 28.28(d). In those cases where there is no recommended decision (i.e., when signatory parties propose that the Regional Administrator approve a consent order), the administrative record—without the intervening certification of the Presiding Officer—is comprised of documents filed with the Hearing Clerk by the participants. See § 28.22(b)(5).

Paragraph (1) provides that documentation relied upon by the complainant that supports the allegations as to liability in the administrative complaint, upon filing with the Hearing Clerk, become part of the administrative record. Paragraph (1) does not refer to documents relating to a proposed penalty or, in the case of the Safe Drinking Water Act, a compliance remedy. "Documentation" as used in this paragraph does not refer to privileged internal Agency communications, such as penalty settlement calculations, attorney-client communications, or memoranda relating to the complainant's decision to initiate the action. The documentation required by this paragraph relates only to factual matters, such as reports submitted by the respondent to the Agency, or relevant portions of inspection reports, that support an allegation that the respondent has violated applicable law.

Paragraph (2) provides that the administrative record also includes, upon its filing with the Hearing Clerk, any Agency record of a previously adjudicated violation by the respondent of any federal pollution control or environmental statute or regulation.

Paragraph (3) includes in the administrative record both the administrative complaint and proof of its service, when filed with the Hearing Clerk. Filing the administrative complaint opens the administrative record. See § 28.16(e).

Paragraph (4) applies only in an action undertaken pursuant to section 309(g) of the Clean Water Act and implements section 309(g)(1) of the CWA, 33 U.S.C. 1319(g)(1), which requires that the Administrator consult with the "State in which the violation occurs" before assessing an administrative civil penalty. See § 28.19. This provision does not require that a summary of such a consultation become part of the administrative record, only that the fact that the consultation occurred, or that the State received an opportunity to consult, be recorded.

Paragraph (5) provides that a copy of the public notice required by § 28.16(d) in Clean Water Act and Safe Drinking Water Act actions and proof of its publication are part of the administrative record upon being filed with the Hearing Clerk.

Paragraph (6) provides that, upon filing with the Hearing Clerk, the record of the designation of the Presiding Officer is part of the administrative record. A Presiding Officer may be designated pursuant to the terms of § 28.13(b) or § 28.16(h), or upon the request by a Presiding Officer that he be replaced pursuant to § 28.12(c)(3) or otherwise. A Region may have a standing Presiding Officer who hears all cases under this part.

Paragraph (7) provides that the date of lodging of a proposed consent order under the Clean Water Act or Safe Drinking Water Act becomes part of the administrative record of an action under this proposed part. The date of lodging is significant to the record of the action because, pursuant to § 28.22(b)(2), the action is suspended upon its lodging. This paragraph does not provide that the proposed consent order upon lodging itself becomes part of the administrative record; it does not. See § 28.2(b) ("*Administrative record* means the following documents that are filed with or by the Hearing Clerk . . ." [emphasis added]) and § 28.2(b)(14)(iii) ("*Administrative record* means . . . [a]ny relevant document which the Presiding Officer finds will assist in the timely and efficient resolution of the action and is not . . . [l]odged with the Hearing Clerk pursuant to § 28.22(b)(1)(i) of this part."). See also § 28.4(c)(5).

Paragraph (8) ensures, in conjunction with § 28.4(a) and (b), that all significant actions by the Presiding Officer are reduced to a signed writing, filed with the Hearing Clerk and thereafter made part of the administrative record.

Paragraph (9) references relevant provisions of the proposed rules which limit document length and require or allow the filing of documents with the Hearing Clerk. This paragraph provides that if the filing is timely and otherwise conforms to applicable requirements, such documents are to become part of the administrative record in the action. Conversely, the penalty for untimely filing with the Clerk—or the filing of overlong documents—is that the documents are excluded from the administrative record and may not be admitted by the Presiding Officer pursuant to § 28.2(b)(15). For example, in order to become part of the administrative record, comments by the public on the administrative complaint must be timely according to the requirements of § 28.20(c) of the proposed rule. The identity of persons who become commenters (and subsequently listed by the Hearing Clerk pursuant to § 28.5[b] of this proposed

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definition. These documents are excluded from the administrative record by definition, except to the extent provided by §§ 28.22(b)(5) and 28.28(b) (concerning an alternative definition of record for consent proceedings.) Other documents filed with the Hearing Clerk are also outside the administrative record if they fail to fit one of the criteria of paragraphs (1) through (18).

part) are included by this paragraph as part of the administrative record of an action under this proposed part.

Paragraph (10) includes in the administrative record, upon its filing with the Hearing Clerk, the record of any hearing conducted under § 28.26 of the proposed part. The Presiding Officer must create and file such a record pursuant to § 28.26(j) of this part.

Paragraph (11) provides that the recommended decision of the Presiding Officer is part of the administrative record of the proceeding. According to § 28.27(b), the Presiding Officer is required to file the recommended decision with the Hearing Clerk at the time of its transmission to the Regional Administrator.

Paragraph (12) includes in the administrative record, upon filing with the Hearing Clerk, the record of various actions of the Regional Administrator or Administrator which occur after the Presiding Officer's role in an action is concluded, or which concern decisions by the Regional Administrator relating to the Presiding Officer.

Paragraph (13), which refers only to proceedings under section 309(g) of the Clean Water Act, includes in the administrative record any evidence presented to the Regional Administrator pursuant to § 28.30 regarding a petition to set aside an order. Evidence presented by a commenter that is not determined by the Regional Administrator to be "material evidence not considered in the issuance of the order" (see section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C), and § 28.30(a)) is included in the administrative record for the purpose of allowing judicial review of the decision of the Regional Administrator whether or not to set aside an order under § 28.30(c).

Paragraph (14) provides that certain Agency policies are part of the administrative record—those that concern the assessment of a civil penalty, but not those that relate to how the Agency settles with a respondent on a civil penalty. As used in this proposal, a "policy concerning the assessment of an administrative penalty" does not include a penalty settlement-only policy (or such portion of a more comprehensive penalty policy that addresses settlement penalty calculations). For example, this subsection does not refer to the Clean Water Act Penalty Policy for Civil Settlement Negotiations, a settlement-only policy, issued on February 11, 1986. See also, *e.g.*, § § 28.2(b)(15)(ii), 28.4(c)(5) and 28.26 (d) and (e).

Paragraph (15) describes the residual authority of the Presiding Officer to add documents to the administrative record which are not otherwise excluded by the provisions of the proposed rule. The admission of such documents must promote the purpose of the proposed rules—the timely and efficient resolution of an action. The Presiding Officer should not admit documents of attenuated relevance into the record. Under this standard, the admission of voluminous records is to be discouraged. A Presiding Officer may not admit documents into the record which ignore length or scope limitations, which are submitted too late, or are excluded entirely by the rule against prohibited communication. He also may not admit documents as they relate to the parties' settlement positions in this or analogous actions, relate to a challenge of a final State or Agency action, or are excluded by sanction, whether imposed by an Agency decisionmaker or by operation of the proposed rule. Compare § § 28.4(a)(1)(xi), and 28.13(c), and 28.24(e)(2) (sanctions imposed by Agency decisionmaker) with § 28.24(e)(1) (sanctions imposed by operation of law.)

The limitations and sanctions established at some length and detail in these rules are the means to achieve the purpose of timely and efficient adjudications, and limit the size of the administrative record accordingly. The Presiding Officer has the authority to include in the record documents not otherwise barred from the record to avoid injustice or to improve the Regional Administrator's understanding of relevant facts which bear on any final Agency action he may take. As stated in § 28.14(a) of this proposal, the action of the Presiding Officer in allowing or disallowing the introduction of documents into the administrative record is not subject to any interlocutory administrative appeal.

Paragraph (16) provides that any record of recusal by an Agency decisionmaker, upon filing with the Hearing Clerk, is part of the administrative record.

Paragraph (17) provides that any record of the respondent's payment of a civil penalty is included as part of the administrative record of an action under the proposed rule. See also § 28.5(d).

Paragraph (18), which relates only to an underground injection control action requiring compliance, provides that any record of the respondent's compliance with the terms of the administrative order is included as part of the administrative record of an action under the proposed rule. See also § 28.5(d).

(c) *Administrator.* Administrator is defined as the Administrator of the United States Environmental Protection Agency, or his delegate. See, *e.g.*, § 28.29 (*sua sponte* review). In any matter in which the Regional Administrator acts in a decisionmaking capacity under the proposed rule, the definition provided in subsection (s) will apply.

(d) *Agency.* Agency is defined as the United States Environmental Protection Agency.

(e) *Agency counsel.* Agency counsel is any enforcement attorney assigned to the action.

(f) *Agency decisionmaker.* Agency decisionmaker means any Agency employee who takes final Agency action in an action under this proposed part, or any Agency employee who is not an "interested person" as defined by subsection (k), who advises such a person.

(g) *Commenter.* This term applies only to actions undertaken pursuant to the Safe Drinking Water Act and section 309(g) of the Clean Water Act and implements the requirements of section 309(g)(4) of the CWA, 33 U.S.C. 1319(g)(4), and section 1423(c)(3) of the SDWA, 42 U.S.C. 300h–2(c)(3). A "commenter" has specific rights under those statutes to participate in the administrative process. Consequently, the term "participant" in § 28.2(l) and elsewhere in this proposed part, for purposes of the Safe Drinking Water Act and section 309(g) of the Clean Water Act, includes "commenters."

This definition and the deadline of § 28.20(c) of the proposed rule distinguish between active participants in its CWA and SDWA penalty proceedings, and those who wish only to communicate with the Agency on the subject of the proceedings. The Agency notes that the comments of persons who do not become participants in the proceeding do become part of the administrative record if they are submitted pursuant to the requirements of § 28.20(c)(1). The requirements for "participant" ("commenter" as "participant") status are: (1) Timeliness; (2) self-identification; and (3) submission of appropriate comments. EPA believes that these requirements are reasonable, administratively necessary, and do not unfairly burden members of the public who wish to participate in the action.

The requirements set forth in this subsection and in § 28.20(c) allow EPA to identify early in the administrative process a complete list of commenters, and thereby improve the efficiency and timeliness of the proceedings. As a matter of fairness to the parties, and to promote timely and efficient actions, persons who nominate themselves as commenters after the deadline

prescribed in § 28.20(c) may not qualify as participants in the proceeding.

(h) *Complainant.* Complainant is defined as the Agency, acting through the official who initiates an action or is authorized to conclude an action by consent under this proposed part. It is possible that two different individuals may carry out these different roles. For example, a Regional program division director may have the responsibility of initiating enforcement actions, but the Deputy Regional Administrator may have the authorization to sign consent orders if commenters are participating in a Clean Water Act or Safe Drinking Water Act action. Because the complainant will be represented by Agency counsel (see § 28.6), it is Agency counsel who is to receive service and notice as the "complainant." See § 28.9(c).

(i) *Consent order.* This definition describes the basic elements that must appear in every consent order issued pursuant to this part, whether under § 28.22(a) or § 28.28(b). The requirements of paragraphs (1) and (2) are common to all administrative orders the Agency may issue under this part. The essential elements of paragraphs (3), (4) and (5) are also the same as other orders under this part. See § 28.28 (a) and (b). The requirements of paragraphs (6) through (8) are being proposed to promote finality and to ensure consistency in Agency settlement practice. Paragraph (9) sets forth the common legal dictum that all terms of the settlement are to be included in the written agreement.

Specific requirements are listed in paragraphs (1) through (6) to ensure that all consent orders recite certain basic information about the legal and factual bases of the action, the payment terms of the settlement, costs and the like. In each consent order the respondent must either admit, or neither admit nor deny, the allegations underlying the consented-to relief. For that reason, in order to establish an administrative record supporting the imposition of a civil penalty or (in the case of the SDWA) the requirement for compliance, or both, paragraphs (2) and (3) reference "uncontested" findings of fact by the Agency.

The requirements are intended to assure that all parties (and commenters, where applicable) are put on notice of certain ramifications of entering into an order on consent, such as the waiver by parties of their right to appeal and the special rights accorded commenters under the SDWA and section 309(g) of the CWA to challenge the settlement. Finally, the requirements that the consent order take into account appropriate statutory penalty factors, and that compliance remedies ordered are reasonably related to the respondent's violation of law, are intended to ensure that all settlements are entered into only after the Agency has considered the appropriate statutory criteria. Although this recitation must appear in the consent order, an analysis of how the factors apply to the action is not required to be set forth in the consent order. It is enough that the terms of the order be sufficiently supported by the administrative record so that the issuance of the order is within the discretion of the Agency.

(j) *Document.* Document is broadly defined and includes, for example, memoranda, transcriptions, tape or video recordings, maps, photographs, and drawings. The definition of document should be quite liberally applied. "Written legal arguments or statements" as described in § 28.8 are types of "documents" which are further limited by operation of § 28.8.

(k) *Interested person.* Interested person is broadly defined to include both Agency and non-Agency persons who have an active interest in the outcome of the administrative enforcement proceeding. The agent of a non-Agency participant may be an unpaid agent, and may include either a person not employed by the Agency or an Agency employee who acts as an agent on behalf of the non-Agency participant's interest in the action.

(l) *Participant.* "Participant" as used in a proceeding under the Safe Drinking Water Act or section 309(g) of the Clean Water Act includes each party and any commenter; as used in an action under any other statute governed by these proposed rules, it has the same meaning as "party." See the definitions of complainant, respondent, and commenter in § 28.2 (g), (h) and (t).

(m) *Party.* Party is defined as any complainant or any respondent who has timely responded in an action under the proposed rules (and has not been sanctioned by a finding of default by the Presiding Officer). See the definitions of complainant and respondent in § 28.2 (h) and (t).

(n) *Presiding Officer.* The Agency is proposing to limit Presiding Officers to attorneys because it anticipates significant legal issues may arise in proceedings under this part, and recognizes the advantage in timeliness and efficiency to all participants of having a legal expert preside over such proceedings.

(o) *Proceeding.* The proposal distinguishes between the terms "hearing," "proceeding" and "action." The term "hearing" is limited to the trial-type procedures of § 28.26 as it relates to liability issues. Proceeding is more broadly defined as any activity involving the parties conducted by the Presiding Officer under these proposed rules. As used in this proposal, "proceeding" does not include any action taken by the Administrator or Regional Administrator, or any negotiations among the participants without the presence of the Presiding Officer. "Action" is the term the Agency uses to encompass all activity in a case from its initiation to final Agency action.

(p) *Prohibited communication.* Prohibited communication is broadly defined—with one minor exception—as an *ex parte* communication between an interested person and an Agency decisionmaker that regards the merits of an action, the substance of settlement negotiations or a lodged proposed consent order, or the substance of a Presiding Officer's recommended decision. This definition should be read in conjunction with the definitions of "interested person" and "Agency decisionmaker," as well as the rule in § 28.12 against prohibited communication, the unavailability of administrative appeal established by § 28.14(a) of this proposal, the limitations on requests for reconsideration established by § 28.14(b) of this proposal, the default penalty procedure implemented by §§ 28.20 (d) and (e) and 28.21 of this proposed part, and the consent order procedure for certain Clean Water Act and Safe Drinking Water Act actions set forth in § 28.22(b) of this part.

The minor exception to the rule, concerning the communication between signatory parties and the Regional Administrator during the lodging period of a proposed consent order, has effect only if there is a non-signatory respondent to the action. As noted in the discussion below of § 28.21(b), in a default situation, a respondent who has failed to meet the applicable response deadline of § 28.20 is not defined as a "party" pursuant to § 28.2(m), and consequently the Agency counsel communicating with the Presiding Officer pursuant to § 28.21 of the proposed rules is not subject to the restrictions of § 28.2(p) or § 28.12. The Agency counsel has no ability to provide a defaulted respondent with an opportunity to participate in § 28.21 proceedings.

(q) *Public notice.* This subsection applies only to actions brought under the Safe Drinking Water Act and section 309(g) of the Clean Water Act. Section 28.16(d) of this proposal requires and describes how and when the Agency is

to notify the public and the affected State agency. The elements of the written notice are set forth in paragraphs (1) through (11) of this proposed subsection. The element of paragraph (4) relating to authorization by rule applies only to actions taken under the SDWA, and paragraph (10) also applies only to the SDWA. The purpose of the public notice provision is to implement applicable statutory requirements of the Clean Water Act and Safe Drinking Water Act to provide notice of the commencement of the action to the public and to provide members of the public with the opportunity to participate.

(r) *Recommended decision.* This subsection defines the elements and form of a recommended decision and describes the range of possible recommended decisions the Presiding Officer may transmit to the Regional Administrator. See also §§ 28.27(a)(3) and 28.28.

(s) *Regional Administrator.* Regional Administrator is defined as the Administrator of the Regional Office of the Agency or his delegate. In a Headquarters-initiated action, the term "Regional Administrator" means the Administrator of the Environmental Protection Agency.

(t) *Respondent.* A person may be a respondent even if that person did not commit the violative act, but is legally responsible under the applicable law for the redress of the violation alleged. This includes persons who may have liability under a vicarious liability doctrine (such as joint tortfeasors, or owners or operators), responsible organizational officials, persons who may be jointly and severally liable, or entities who may be liable under an aiding, abetting, commanding or procuring theory, such as described for criminal cases in 18 U.S.C. 2. The proposed rules do not purport to impose liability where there is none under the applicable law governing the action. A defaulted "respondent" is not a "party" or "participant." Compare this subsection with § 28.2 (l) and (m).

(u) *Response.* The response to the administrative complaint is equivalent to the answer to a complaint in a civil case filed in federal court. The respondent has the burden of going forward at this point in a proceeding if the respondent wishes to contest a complainant's allegation of fact or conclusion of law regarding liability, or wishes to contest the complainant's request for relief. See §§ 28.10(b) and 28.20(d). The respondent or the respondent's counsel, if any, must sign the response and provide the name, address and telephone number of the respondent and the respondent's counsel, if he is so represented.

Section 28.3 Number and Gender

The section provides the standard rule of interpretation that words in the singular include the plural, where appropriate, and vice versa, and that words in the masculine gender also indicate the feminine gender, where appropriate, and vice versa.

Section 28.4 Presiding Officer

Under this proposal, the Regional Administrator will designate a Presiding Officer to oversee the proceedings within twenty days after the service of the administrative complaint. See § 28.16(h). The Agency intends that any actions requiring a Presiding Officer occurring before then will result in the immediate appointment of a Presiding Officer. In those Regions in which there is a standing "Judicial Officer," that official may be authorized to act as a Presiding Officer for purposes of this Part in the interim between the service of an administrative complaint and proceedings under this part.

The Agency has not included specific qualification requirements in the regulation for the Presiding Officer, except that the individual be a lawyer who is neutral to the controversy. See also §§ 28.2(n) and 28.4(c). The Agency fully anticipates that senior attorneys, preferably with litigation experience and a thorough understanding of the administrative process and environmental issues, will be selected to hear these cases. EPA has not included these requirements for the Presiding Officer as elements of the proposed regulations because it does not want to arbitrarily preclude otherwise competent attorneys from consideration, especially in the early stages of its administrative penalty program. Since EPA must, through regulation or otherwise, set qualifications for its Presiding Officers, the Agency solicits comment on this issue.

The authorities, duties, and limitations of the Presiding Officer are listed in § 28.4 (a), (b), and (c), respectively.

(a) *Authority.* The Presiding Officer is authorized to take certain actions, described in paragraph (a)(1), only by a signed writing filed with the Hearing Clerk. Because of their significance, these actions must be memorialized in writing. Under § 28.4(a)(1)(xi), the Presiding Officer may impose a sanction upon a participant if such a sanction is necessary to aid in the efficient and impartial administration of justice under this proposed part. Sanctions may include, for example, the striking of a cause of action or a defense, making a finding of default as to liability, or limiting or eliminating a commenter's right to participate in an action. Paragraph (a)(2) provides authority to the Presiding Officer to take minor or ministerial actions without requiring a signed writing, and also provides residual authority for the taking of necessary actions.

(b) *Duties.* This subsection lists the Presiding Officer's duties. Paragraph (4) requires the Presiding Officer to memorialize his actions whenever required by paragraph (a)(1), as well as requiring him to memorialize any deadlines he establishes, and to memorialize any significant action he takes under paragraph (a)(2). The requirement for the recording of deadlines is important for determining which documents are eligible for inclusion in the administrative record. See § 28.2(b) (9) and (15). The Presiding Officer is also required to maintain order and adjudicate allegations arising in actions under this proposed part efficiently and impartially. The Presiding Officer shall at all times act in a timely fashion.

(c) *Limitations.* The limitations established in this subsection, together with the provisions of § 28.13(a), are intended to maintain impartial and timely decisionmaking in actions under part 28.

Should the Presiding Officer violate a limitation imposed by this subsection or substantially fail to comply with the requirements of § 28.4(b), a party may, with supporting affidavits, request the Regional Administrator to designate an alternate Presiding Officer. See § 28.13(a). In response, the Regional Administrator must provide a written decision to the parties outlining the underlying findings and reasons for his decision on the request. The Regional Administrator may sanction the requesting party upon denying a request and determining that the requesting party acted for purposes of delay or for any other improper purpose. § 28.13 (b) and (c).

The requirement of paragraph (c)(1) that the Presiding Officer not have "any prior connection with the action before him" is intended to ensure that the Presiding Officer comes to the proceeding as a neutral. This prohibition is not intended to bar a Presiding Officer from knowledge of the relevant statute, relevant agency policies, or the persons appearing before him in the proceeding. The Agency believes that one of the advantages of administrative penalty proceedings is the potential use of experts as Presiding Officers, and views

such expertise and experience as a benefit, not as a disability.

The requirement of paragraph (c)(2) that the Presiding Officer not have "any interest in the outcome of the action before him" prohibits the Presiding Officer from having any financial interest, personal interest, or career interest in the outcome of the action. Any interest of these sorts could result in the Presiding Officer having an apparent or real interest in the outcome of the proceeding.

The limitation in paragraph (c)(3) regarding the Presiding Officer's initiating or knowingly engaging in prohibited communication protects the neutrality of the administrative process. The limitation is carefully drawn, however, to exclude innocent contact by the Presiding Officer with an interested person who may attempt to compromise the officer under the proposed rules by attempting to communicate with him despite the regulatory prohibition. If the Presiding Officer is aware he has been contacted *ex parte* by an interested person, under § 28.12(b) he must disclose the contact to the other participants if it was "significant or prejudicial" and, if such communication was by a participant, upon request of any participant he shall conduct an appropriate show cause proceeding under that subsection. The § 28.12 rule against prohibited communications is, among other things, intended to safeguard the Presiding Officer from the possibility of the conflict of interest referenced in the discussion above of paragraph (c)(2).

The Agency notes that the prohibition against prohibited communication prohibits contacts between the Presiding Officer and interested persons regarding the substance of any settlement negotiations between the parties, or regarding the substance of any lodged, but unapproved, consent order. See § 28.2(p)(2). The Presiding Officer may, however, communicate with the participants regarding the existence or scheduling of any such negotiations, so long as their content is not communicated to him. The Presiding Officer is notified by the Hearing Clerk of the fact of lodging of a proposed Safe Drinking Water Act or Section 309(g) Clean Water Act consent order. See § 28.22(b)(4).

The limitation on the Presiding Officer's authority to delay an administrative proceeding under paragraph (c)(4) conforms to the goal of timely and efficient proceedings described by § 28.1. These rules do not limit the abilities of the participants to request information under applicable statutes and regulations (see, *e.g.*, § 28.1 ["Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law"]); however, except as allowed in limited circumstances by § 28.24(c)(2), the Agency seeks to prohibit participants from delaying a proceeding by the use of information requests, such as requests for information under the Freedom of Information Act, 5 U.S.C. 552. If the Presiding Officer agrees to delay an action because of a party's request for or failure to produce information except as allowed under § 28.24(c)(2), the Presiding Officer is subject to replacement under this paragraph and § 28.13. The proposed rules provide appropriate opportunities for obtaining needed information, and provide sanctions for a participant's refusal to provide required information in a timely fashion. See § 28.24(e)(1).

Under paragraph (c)(5) and § 28.2(b)(15)(ii) the reasoning of a party regarding the negotiation of a settlement may not become part of the administrative record, and may not be required by the Presiding Officer or other participants in an action. Such rationales and calculations are highly confidential and are privileged information. To allow the Presiding Officer or any Agency decisionmaker to require the disclosure of such information would chill the settlement process and is therefore not permitted under these rules. Agency policy documents governing settlement, although publicly available, are not discoverable under the information exchange rules of § 28.24. Such policy documents as they relate to settlement are likewise not binding on Agency decisionmakers (as defined in § 28.2[b]) in resolving actions under this Part. Consequently, in a proceeding under this Part a Presiding Officer or an opposing party may not require the production of Agency settlement policy documents or any specific calculations the Agency may have made pursuant to such a policy.

As noted in the discussion of § 28.26, paragraph (c)(5) promotes the possibility of settlement by ensuring that the Presiding Officer not allow the introduction of settlement offers into evidence in a proceeding. The provisions of §§ 28.2(p)(2) and 28.4(c)(5) ensure that the parties are not prejudiced by settlement negotiations and remain in control of settlement discussions. Settlement positions are not relevant to the function of the Presiding Officer, and are potentially prejudicial to the litigation positions of the parties. The irrelevancy of settlements in other cases is even greater; each case is different on its facts. Consideration by the Presiding Officer of settlements in other cases would chill settlements generally, and would unduly delay the proceedings while irrelevant materials were considered. Consequently, such information is barred from the administrative record and consideration of such materials is grounds for replacement of the Presiding Officer. See also §§ 28.2 (b)(15)(ii) and (p)(2), 28.12 and 28.13(a).

The prohibition of paragraph (c)(6) restates and gives effect to the limitation on the scope of the proceedings under the proposed Part. If the Presiding Officer allows a "challenge to a final State or Agency action," the Presiding Officer is subject, as is true for any violation of a limitation under this subsection, to replacement under § 28.13(a). See also § 28.2(b)(15)(ii).

Paragraph (c)(7) prohibits the Presiding Officer from dismissing an administrative complaint. As provided by subpart D, if an administrative complaint does not state a cause of action, it shall be withdrawn by the Regional Administrator. See §§ 28.2(r)(1), 28.27(a)(3) and 28.28(a)(2)(i).

Section 28.5 Hearing Clerk

This section sets forth the duties and responsibilities of the Hearing Clerk. In almost all cases, the Hearing Clerk will be a Regional employee, but in those cases in which the complainant is a Headquarters official, and the action initiates at Headquarters, the Hearing Clerk will be a Headquarters employee.

Subsection (a) provides that once a Presiding Officer is designated by the Regional Administrator under § 28.16(h), the Hearing Clerk shall immediately notify, in writing, the complainant and each respondent of the name of the Presiding Officer. However, for purposes of administrative convenience, in Safe Drinking Water Act and section 309(g) Clean Water Act actions the Clerk is to notify each commenter of the designation under § 28.16(h) at the same time—upon the close of the comment period. If the Regional Administrator designates a new Presiding Officer under § 28.13(b), the Hearing Clerk shall immediately notify all participants of that event.

Subsection (b) requires the Hearing Clerk to create and maintain a list of any persons who, by the close of the public comment period, become commenters under the Safe Drinking Water Act or section 309(g) of the Clean Water Act by fulfilling the requirements of § 28.2(g) and § 28.20(c). The names of persons who are commenters become

part of the administrative record pursuant to those subsections and § 28.2(b)(9) of these proposed rules, and any organization of that information by the Hearing Clerk pursuant to this subsection would also be publicly available.

In Safe Drinking Water Act and section 309(g) Clean Water Act actions in which a commenter participates, following the close of the public comment period subsection (c) requires the Hearing Clerk to notify the respondent, complainant, any commenters, and the Presiding Officer of the name and address of each participant. In the case of the complainant, the Hearing Clerk shall provide the name and address of Agency counsel.

Although the name of the respondent, for example, will be known to every participant, if the respondent is represented by counsel, counsel's name and address shall be provided. (The name and address of the respondent's counsel, if any, will be provided in the response to the administrative complaint. See § 28.2[u].) The complainant will be notified by service on Agency counsel. See § 28.9(c). If any other participant is represented by another person, the Hearing Clerk should provide the name and address of the participant's representative. See the definitions of "commenter," "respondent," and "participant" at § 28.2 (g), (l), and (t).

The requirement of subsection (d) that the Hearing Clerk record the date of receipt of a document does not thereby make it part of the administrative record. Recording the date of receipt of a document from a non-participant will merely demonstrate whether such a document was received pursuant to the deadline of § 28.20(c). Documents under this subsection include proof of payment of an assessed penalty, and administrative order compliance reports under the Safe Drinking Water Act.

Subsection (e) requires the Hearing Clerk to keep the Presiding Officer apprised of all filings in the action by notifying him of the receipt of any documents filed by the respondent, complainant, or any commenters. However, a filing does not become part of the administrative record unless it meets the requirements of § 28.2(b) of this proposed part. In some actions, the Presiding Officer has discretion under § 28.2(b)(15) to decide whether a filing becomes part of the administrative record. (The Presiding Officer, however, is prohibited from reviewing proposed consent orders or written explanations lodged under § 28.22[b] of this part.) In such actions, the Presiding Officer may also have to decide other issues, such as whether a filing occurs pursuant to the requirements, such as timeliness, of § 28.2(b)(9). No person may appeal such a decision by the Presiding Officer. See § 28.14(a).

Subsection (f) requires the Hearing Clerk to properly maintain and to provide to non-signatory participants any proposed consent order lodged in a SDWA or CWA 309(g) action pursuant to § 28.22(b) of this part.

Under subsection (g), the Hearing Clerk shall bill any costs relating to the copying of documents in the public record.

Under subsection (h) the Clerk is to return the disapproved proposed order, and any explanation of it, to the signatory parties so that the Presiding Officer may not be inadvertently influenced by it.

Subsection (i) provides that the Hearing Clerk will perform any other ministerial and clerical duties the Presiding Officer may require to assist him in carrying out his responsibilities under this proposed part.

Subsection (j) provides that the Hearing Clerk will assist the Regional Administrator in carrying out functions under this part. This includes recording and maintaining documents the Regional Administrator files under § 28.28(d).

Section 28.6 Representation by Counsel

This section provides that the respondent and any commenters may be represented by counsel at any stage of an action under this part. This section further provides that the complainant shall be represented by Agency counsel in all verbal and written communication with any Agency decisionmaker. The proposed regulation does not require that Agency counsel represent the complainant in negotiations with other participants.

Section 28.7 Computation of Time

This proposed section is modeled in part on 40 CFR 22.07, the Agency's rules for computation of time and service for other laws it administers.

(a) *Computation of days.* The time period is to begin to run on the day after the act, event or default takes place. The last day of the period is to be included, unless the last day falls on a Saturday, Sunday or federal holiday, in which case the last day to act will be extended to the end of the following business day.

(b) *Time of notice.* The proposed rule provides that whenever service of a notice, pleading or other document is by mail or other substituted form of service, five days be added to the prescribed period for the person served to act. The Agency considered using the three day rule of the Federal Rules of Civil Procedure, but is proposing a five day rule to be consistent with 40 CFR part 22, because the resultant delay is not very consequential. If the party noticed has signed a receipt of service, the date of receipt is the date of notice.

(c) *Time of compliance.* Except as otherwise provided, this subsection provides that the time of compliance with a deadline imposed pursuant to this part is deemed to occur on the date of a personal response or the date of the postmark (or equivalent proof) of a mailed or messengered response.

Section 28.8 Limitations on Written Legal Arguments or Statements

The purpose of these limitations is to improve the speed and efficiency of the hearings conducted under this proposed rule by requiring succinct legal arguments and statements and to prevent the participants from flooding the record with arguments or documentation not relevant to the action. Good cause for authorizing additional submissions under this part would be for the purpose of promoting a more efficient, equitable and timely administration of the proceedings.

Documents that do not conform to the requirements of this section cannot become part of the administrative record unless the parties have lodged a proposed consent order that is not disapproved (see §§ 28.2[b] and 28.22[b][5]), and may not otherwise be considered by the Regional Administrator in his decision in an action under this proposed part. See §§ 28.2(b)(9) and (15)(ii), 28.27(a)(1), and 28.28(a)(1). Limitations under this section applicable to legal arguments or statements do not apply to supporting factual documents, such as affidavits, unless so ordered by the Presiding Officer.

Section 28.9 Service of Documents

(a) *By participants.* Participants in the action may serve all pleadings and other papers, except a subpoena or the administrative complaint, personally or by certified or first class mail, postage prepaid. A certificate of service must be attached to all papers served. (By contrast, pursuant to §§ 28.11(b) and 28.16(c), the Hearing Clerk serves a subpoena or the administrative complaint either personally or by certified mail, return receipt requested.) The original of all papers served, including the original certificate of service, must be simultaneously filed with the Hearing Clerk. The complainant files the administrative complaint with

the Hearing Clerk upon its issuance. See § 28.16(e).

"Pleadings" include, for example, administrative complaints and responses (and their amendments), motions, briefs, legal statements, and any notice of withdrawal of an administrative complaint. The term does not include any proposed consent order lodged pursuant to § 28.22(b), which is not provided to the Presiding Officer, or information exchanged pursuant to § 28.24, which pursuant to § 28.24(d) is served upon the Presiding Officer, but not filed with the Hearing Clerk or provided to participating commenters. The parenthetical regarding "messengered service" allows participants to use alternate forms of service, such as U.S. Next Day Mail, or certain private deliverers with receipt and trace capacity that are at least as fast and reliable as first class or certified mail.

(b) *By the Hearing Clerk.* This section places with the Hearing Clerk the primary responsibility for serving participants with notices, rulings, orders, and other documents issued by Agency decisionmakers. For example, the Hearing Clerk is required to notify each participant of the appointment of a Presiding Officer (§ 28.5(a)) and the identity of all participants in the action (§ 28.5(c)), the scheduling of any proceeding to take place under these rules, and is required to serve each participant with a copy of the Presiding Officer's recommended decision, the decision of the Regional Administrator, and other rulings, such as the entry of a default order. Notification of commenters in Safe Drinking Water Act or section 309(g) Clean Water Act actions of the scheduling of proceedings does not in any way invest the commenters with the right to participate in prehearing conferences or other aspects of the proceedings limited by this proposed Part to the parties alone.

(c) *Upon counsel.* Other than service of the administrative complaint, which is to be served upon the person named in the complaint, all service made upon a participant who is represented by an attorney shall be made upon that person's attorney, unless otherwise ordered by the Presiding Officer.

Section 28.10 Parties' Burdens of Going Forward, Proof and Persuasion

This section describes the regulatory burdens on the parties of presenting and defending the action before the Presiding Officer.

(a) Complainant's burden of going forward. The complainant has the initial burden of presenting a prima facie case supporting the cause of action alleged in the administrative complaint and a request for relief. That is, the complainant must make allegations which, if true, would be sufficient to show that the respondent may be subjected to providing relief under the law. See § 28.16(a).

(b) The respondent has the burden within the deadlines imposed by § 28.20 (a) and (b) of claiming (1) that the allegations as to liability in the complaint are untrue or that it is otherwise not liable for the redress of the violations alleged, and (2) that the relief requested by the complainant should not be granted. In addition, where the complainant is seeking a penalty, a respondent who has met the deadlines imposed by § 28.20 (a) and (b) carries the burden of going forward no later than the deadline imposed by the Presiding Officer under § 28.23(b)(3) to provide all information requested by the complainant relating to the respondent's inability to pay a civil penalty and relating to the respondent's economic benefit received from alleged violations of applicable law.

(c) Parties' joint burden of going forward. This subsection applies only to actions under the Safe Drinking Water Act and section 309(g) of the Clean Water Act in which commenters are participating. The parties who submit a proposed consent order for approval by the Regional Administrator are jointly responsible, upon the request of the Regional Administrator pursuant to §§ 28.22(b)(1)(ii) and 28.28(b)(1), for providing the Regional Administrator with the legal bases for signing it. If a consent order has been lodged, the Regional Administrator may not rely on the Presiding Officer for advice. See also §§ 28.2(p), 28.4(c)(3), 28.12 and 28.13.

(d) Complainant's burden of proof. In any hearing as to liability held under § 28.26, the complainant has the burden of proving its case as to liability. To do so, it must prove every fact it has alleged as an element of the violation, and that the respondent has contested, by a preponderance of the evidence. A "preponderance" of the evidence is the greater weight; the complainant must present evidence which, when judged by its weight, value and credibility, is more convincing than the opposing evidence offered by the respondent. If commenters participate in a Safe Drinking Water Act or section 309(g) Clean Water Act liability hearing, the Presiding Officer is to determine whether the preponderance of evidence as presented by all participants demonstrates each fact necessary to prove liability.

(e) Parties' burden of persuasion. In proceedings other than fact-finding § 28.26 hearings on liability, no formal burden of proof applies. Instead, the proponent of any legal argument made to the Presiding Officer bears a burden of persuasion, that is, of convincing the Agency decisionmakers that the legal position asserted is correct and should be adopted in the action.

When the complainant seeks a civil penalty, the complainant must carry the burden of persuasion—before the Presiding Officer transmits a recommended decision to the Regional Administrator—that the penalty sought is appropriate in light of the statutory factors and documents submitted to the Hearing Clerk for inclusion in the administrative record. Under these proposed regulations, the complainant does not incur this burden until the Presiding Officer conducts either a default proceeding under § 28.21 or a remedy proceeding under § 28.25 or § 28.26(h).

Because penalty issues are matters of persuasion rather than proof, the complainant is not subject to an information request regarding the basis for a requested assessment of a civil penalty under either § 28.11 (Subpoenas) or § 28.24 (Information exchange). The Presiding Officer has no authority to require the complainant to carry the burden of persuasion as to requested relief prior to a § 28.21, § 28.25, or § 28.26(h) proceeding. Statutory penalty factors are set out in sections 309(g)(3) and 311(b)(8) of the Clean Water Act, 33 U.S.C. 1319(g)(3) and 1321(b)(8); section 1423(c)(4)(B) of the Safe Drinking Water Act, 42 U.S.C. 300h– 2(c)(4)(B); 109(a)(3) of CERCLA, 42 U.S.C. 9609(a)(3); and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. 11045(b)(1)(C) (for Class I emergency notification violations only). No specific statutory factors are provided for administrative penalties authorized by sections 325(c)(2) and (d) of EPCRA, 42 U.S.C. 11045(c)(2) and (d). If the respondent has not met its burden of going forward regarding its inability to pay a civil penalty, the complainant carries no burden on this issue; the respondent will be deemed able to pay the maximum statutory penalty. See §§ 28.10(b)(2) and 28.24(e)(1)(iii). If the respondent has not met its burden of going forward regarding any economic benefit it has enjoyed as a result of its violations, the complainant likewise carries no burden, but the amount that the Presiding Officer may recommend and the Regional Administrator may impose in the absence of any support in the administrative record should be a token or symbolic amount.

Section 28.11 Subpoenas

This section sets forth the authority of the Presiding Officer to subpoena witnesses and documents, and the procedure for doing so. This authority is provided explicitly by the applicable statutes, as noted below. The penalty for the violation of an Agency subpoena is provided by applicable law. See sections 309(g)(10) and 311(b)(6)(I) of the Clean Water Act, 33 U.S.C. 1319(g)(10) and 1321(b)(6)(I); section 1423(c)(8) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(8); section 109(a)(5) of CERCLA, 42 U.S.C. 9609(a)(5); and section 325(f)(2) of EPCRA, 42 U.S.C. 11045(f)(2).

(a) *Issuance.* The authority of the Presiding Officer to issue subpoenas is statutorily based. In the case of the Clean Water Act, sections 309(g)(10) and 311(b)(6)(I) provide the authority; in the case of the Safe Drinking Water Act, section 1423(c)(8) provides the authority; in the case of CERCLA, section 109(a)(5), and in the case of EPCRA, section 325(f)(2). See 33 U.S.C. 1319(g)(10) and 1321(b)(6)(I) and 42 U.S.C. sections 300h–2(c)(8), 9609(a)(5) and 11045(f)(2). The Clean Water Act, CERCLA and EPCRA provide, in relevant part, that the Agency "may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings" under the administrative penalty provisions cited in § 28.1. In the case of CERCLA, this authority among others is delegated to the Administrator by Executive Order 12580 (January 23, 1987). The SDWA provides a more expansive authorization than other statutes to be governed by this part by allowing the issuance of subpoenas "in connection with administrative proceedings under this subsection." To the extent that the SDWA may authorize investigatory subpoenas that authority is outside the scope of this part. Under § 28.1 "Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law." See also § 28.24(a) ("Except . . . by authorization of law outside the scope of this part, this section provides exclusive authority for the provision of information by parties . . . .")

Subpoena authority under this section is available to support a liability hearing under § 28.26 (see discussion of § 28.10(e) above) and subpoenas are to be issued at the discretion of the Presiding Officer. The parties have a right only to request the issuance of a subpoena. The scope of subpoenas issued by the Presiding Officer under this subsection is limited to the scope of a § 28.26 hearing as to liability. Under no circumstance may a subpoena be used as a "fishing expedition" or as a supplement or replacement for information exchange under § 28.24.

(b) *Service.* The proposed rules establish subpoena service requirements that are the same for the service of the administrative complaint upon the respondent. In the case of a witness not otherwise involved in a proceeding, there is an equivalent need to conclusively establish the Agency's personal jurisdiction over the person receiving the subpoena.

(c) *Filing with Hearing Clerk.* Section 28.2(b)(8) provides that each subpoena issued under this section is to become part of the certified administrative record. Information produced in response to the subpoena at a liability hearing will become part of the administrative record if the Presiding Officer admits it into evidence pursuant to § 28.26 (d) and (i). See also § 28.2(b)(9).

Section 28.12 Prohibited Communication

This section of the proposed rule prohibits certain communications and establishes procedures for curing any problem created by the communication.

(a) *Prohibition.* This subsection prohibits certain communication, as specifically defined by § 28.2(p), between any interested person (defined by § 28.2(k)) and any Agency decisionmaker (defined by § 28.2(f)).

(b) *Notification and investigation.* This subsection charges the Presiding Officer with the responsibility for notifying immediately each participant in a proceeding of the occurrence of any prohibited communication. If requested by a participant, under certain circumstances the Presiding Officer must conduct a proceeding in order to determine whether to impose any sanction against a participant for the prohibited communication.

(c) *Sanctions or recusal.* This subsection establishes the Presiding Officer and Regional Administrator's authority to impose sanctions against any participant who is responsible for a prohibited communication and describes the duty of recusal of any Agency decisionmaker who "has initiated or knowingly engaged in prohibited communication." If the decisionmaker has initiated or knowingly engaged in such communication with a defaulted respondent—a non-participant, but nonetheless an "interested person"—that Agency official shall recuse himself or be subject to replacement under § 28.13.

The Presiding Officer is the sanctioning official in an action until he has transmitted the recommended decision, except during a suspension of an action under § 28.22(b)(2). Sanctioning is otherwise the responsibility of the Regional Administrator.

Recusal is required only where the Agency decisionmaker bears some responsibility for the prohibited communication or where the communication is so prejudicial as to preclude the decisionmaker from fairly deciding the action. If the decisionmaker has been contacted as to the merits of an action by a person whom the Agency official does not know as an interested person, the official, who may be blameless and not influenced by the communication, should not recuse himself on the basis of that contact alone. Any Agency decisionmaker may, however, recuse himself for cause at any time in an action.

Section 28.13 Request for an Alternate Presiding Officer

This section serves to ensure that the duties and limitations imposed on the Presiding Officer by § 28.4 (b) and (c) are respected.

(a) *Request.* As previously noted, an improper delay (§ 28.4(c)(4)), involvement in settlement (§ 28.4(c) (3) and (5)), reconsideration of final Agency action (§ 28.4(c)(6)), and dismissal of an administrative complaint (§ 28.4(c)(7)), are grounds for replacement of the Presiding Officer. Replacement in such circumstances goes beyond the usual, stated grounds for such actions in other administrative adjudicatory proceedings. The possibility of replacement emphasizes and helps carry out the provisions of these rules which are intended to make the subject proceedings simpler and quicker than more traditional proceedings.

In addition, under this proposed part, the Presiding Officer has no "equitable" power knowingly to disregard or suspend any provision of the part itself. Such an action would represent one way in which the Presiding Officer may substantially fail "to comply with his duties under § 28.4(b)." The Agency does not intend, however, that Presiding Officers be subject to disqualification for occasional, inadvertant mistakes in the application of proposed part 28.

(b) *Decision.* This subsection provides that a decision by the Regional Administrator to grant or deny such a request must be in writing and provide the basis for the decision. The action of the Regional Administrator is to be filed with the Hearing Clerk and become part

of the administrative record of the action. See §§ 28.2(b)(12), 28.5(j) and 28.28(d).

(c) *Sanctions.* This subsection allows the Regional Administrator to impose sanctions (other than fine or imprisonment) on any party making a request for an alternate Presiding Officer for delay or other improper purposes. This authority is intended to deter dilatory, frivolous, or otherwise inappropriate disqualification requests.

Section 28.14 Unavailability of Administrative Appeal; Limitation on Requests for Reconsideration

(a) *Unavailability of administrative appeal.* This provision establishes the absolute unavailability of an administrative appeal of any action of the Presiding Officer or the Regional Administrator in an action under this proposed part. The Agency takes seriously congressional instructions that it resolve administrative enforcement actions quickly. See legislative histories cited in discussion of § 28.1, above. EPA intends to promote efficient and timely administrative resolutions of actions undertaken pursuant to this part by establishing the ultimate procedural authority of the Presiding Officer over a proceeding conducted under this part and the ultimate administrative authority of the Regional Administrator (subject only to the Administrator's review authority under § 28.29) over actions undertaken under this part. Under the proposal, if a person tries to appeal administratively any action by an agency decisionmaker, this would constitute a prohibited communication under §§ 28.2(p) and 28.12(a), and subject the nominal "appellant" to sanctions under § 28.12(c).

The Agency notes, in this context, that (1) any recommended or proposed recommended findings of fact and conclusions of law provided by the Presiding Officer to the participants under § 28.25(e) and (2) any determination of genuine issues of fact under § 28.25(f) are neither final Agency action for purposes of an appeal, nor appealable administratively on an interlocutory basis. Such materials are provided to the participants only to clarify the legal basis of the remainder of the action.

The unavailability of an administrative appeal does not affect the right of any person authorized by applicable law to receive appropriate judicial review of a final Agency action.

(b) *Limitation on requests for reconsideration.* This subsection prohibits any person from requesting the Presiding Officer to reconsider the recommended decision, but does not prohibit participants from requesting the Presiding Officer to reconsider rulings made before the transmission of the recommended decision to the Regional Administrator pursuant to § 28.27(a). This subsection recognizes, for purposes of section 309(g)(4)(C) of the Clean Water Act and § 28.30, that a commenter may request a Regional Administrator to reconsider the issuance of an order assessing a penalty. See also § 28.28(f)(1). A person who violates the prohibition of this subsection is subject to sanction for initiating or engaging in a prohibited communication. See §§ 28.2(p) and 28.12.

Section 28.15 Prospective Effect of this Part

This procedural section provides that the rules are prospectively effective. This part will not apply in any action initiated before its effective date, except where it has been adopted as procedural guidance. Any action initiated by the issuance of an administrative complaint on or after its effective date will be governed by the proposed rules.

Subpart B—Prehearing

Section 28.16 Initiation of Action

This section establishes how the Agency shall initiate an action under this proposed part. The complainant issues the administrative complaint, provides for its service, provides public notice of its service in Clean Water Act and Safe Drinking Water Act actions, and opens the administrative record by the filing of the administrative complaint and certificate of service. In opening the record, the complainant may also file anticipatory motions, including motions for summary determination, accelerated decision, and for remedy upon default. See § 28.16 (e) and (f).

In certain cases under these rules, EPA anticipates that many actions, especially under EPCRA and CERCLA, may be decided very quickly. These early resolutions could be obtained through the complainant, at the time the complaint is filed, by, for example: (1) Filing documentation of its liability and remedy case, (2) Satisfying all but its supplemental information exchange obligations by declaring it has produced all known information that will constitute its case against the respondent and by notifying the respondent it will request no additional information pursuant to § 28.24, and (3) Filing anticipatory motions with supporting materials, in the alternative, for either summary determination and an accelerated recommended decision under § 28.25, or a default remedy under § 28.21—depending on whether or not the respondent appears by the deadline established under § 28.20.

The effect of this approach is to reduce significantly the time needed for the Presiding Officer to transmit a recommended decision to the Regional Administrator. For example, in a case in which the complainant filed all the documentation in a case, declined the opportunity for later information requests, and also filed alternative anticipatory motions, the respondent would have thirty days to answer both the administrative complaint and the motion for an accelerated recommended decision.[5] If the respondent failed to answer, the Presiding Officer could transmit a recommended decision based on default as soon as thirty days after the filing of the administrative complaint. See § § 28.16 (e) and (f), 28.20 (a) (d) and (e), 28.21 and 28.27(a). (Because of the early filing of the default remedy motion, there is no need for an additional thirty days under § 28.21(b).) If the respondent answers, the Presiding Officer may transmit an accelerated recommended decision as soon as thirty days after the prehearing conference, or approximately sixty days after the response is filed. See § § 28.16 (e) and (f), 28.20(a), 28.23(c), 28.25 and 28.27(a).

Under this section, the Hearing Clerk notifies the Agency decisionmaker of the initiation of the action and proof of service of the administrative complaint and, if the Presiding Officer has not already been designated, the Regional Administrator assigns a Presiding Officer to the action.

In this proposal, the Agency treats the administrative complaint as analogous to a judicial complaint filed in United States district court. The Agency is following a notice pleading rule, and requires only that the administrative complaint allege each element of liability of each claim and propose a penalty or, in the case of the Safe Drinking Water Act, propose a penalty and compliance with the law. Under this rule, at the outset of the action the complainant bears only the burden of coming forward with the liability elements of the complaint and a request for relief. The complainant has no burden to prove its allegations as to liability or carry a burden of persuasion as to the assessment of an appropriate penalty or compliance remedy until later in the action. See § 28.10 and accompanying preamble discussion. The

[5] The time for resolution described in this paragraph may be extended by thirty days if the respondent certifies to the Hearing Clerk that he had made a settlement offer within thirty days of receiving the administrative complaint. See § 28.20(b)(2).

complainant may not be required to justify its penalty request upon the filing of the administrative complaint any more than if the penalty request had been filed in a federal district court.

The Agency believes that, in proceedings such as those proposed today, and unlike Agency practice developed under the Consolidated Rules of Practice at 40 CFR part 22, it is inappropriate to require the complainant to carry a burden of persuasion upon the initiation of the action. Consequently, at the outset of a action, the Agency will be free in the administrative complaint to request "up to" the statutory maximum, or to request a specific dollar amount, in either case taking into account whatever statutory penalty factors may apply. As a result of separating the penalty justification from the administrative complaint, Agency Presiding Officers will consider statutory penalty assessment criteria and the administrative record developed before them in reaching a recommended decision, and not any Agency policy governing only settlement requirements.

In most cases, EPA anticipates that the parties will reach a settlement of the dispute. In that circumstance, and if the action is one in which a commenter participates under the Safe Drinking Water Act or section 309(g) of the Clean Water Act and the Regional Administrator requests a written explanation of the settlement, the burden of justifying the penalty under the applicable law will be shared. See § § 28.10(c) and 28.22(b)(1)(ii). In the remaining actions, in instances of default or litigation, the burden of persuasion will fall on the complainant at a later stage, after the opportunity to develop information on the violations, and at a time when the burden is more appropriately borne. See § § 28.10(e), 28.21(b), 28.24, and 28.25 and 28.26 (h) (i) and (k).

(a) *Issuance of administrative complaint.* This subsection sets forth the substantive statutory claims to which these proposed consolidated administrative enforcement regulations apply.

Paragraph (1) tracks the statutory language of Section 309(g)(1) of the CWA, 33 U.S.C. 1319(g)(1), which authorizes the issuance of administrative complaints for penalties whenever the Administrator has a good faith basis to believe that any person has violated various sections of the CWA or permit conditions or limitations implementing such sections of the CWA. These proposed rules are intended to cover only the so-called "Class I" administrative complaints, which are not sub- ject to the requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. 554 and 556. See CWA section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A). Clean Water Act Class I proceedings are limited by statute to actions for civil penalties only.

Paragraph (2) tracks the statutory language of section 311(b)(6)(A) of the CWA, 33 U.S.C. 1321(b)(6)(A), which authorizes the issuance of administrative complaints for penalties whenever the Administrator has a good faith basis for believing that any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility has violated section 311(b)(3) of the CWA or is violating regulations issued pursuant to Section 311(j) of the Act, 33 U.S.C. 1321 (b)(3) and (j).

Paragraph (3) provides for the initiation of administrative actions authorized by section 1423(c) of the SDWA, 42 U.S.C. 300h–2(c), relating to violations of the requirements of an applicable underground injection control program, under these proposed regulations. Section 1423(c) of the Safe Drinking Water Act authorizes the issuance of an administrative complaint seeking both compliance and civil penalties for past violations, and these proposed rules have been drafted to enable Agency decisionmakers to fashion the complete relief contemplated by the statute. Under the first sentence of this paragraph, the Administrator may seek both compliance and civil penalties against a person who "is violating" applicable law; under the last sentence, the Administrator may seek civil penalties against a person who "has violated" applicable law, "but such violation has ceased and its cause has been remedied." In the latter case, there is no need for an order requiring compliance. A violation has not ceased, however, if it is intermittent; the Agency understands "cessation" to mean an effective, permanent solution to the violations has been adopted.

Paragraph (4) identifies the underlying CERCLA claims that may be administratively adjudicated under these proposed regulations. Specifically, so-called "Class I" civil penalties authorized by section 109(a)(1) of CERCLA, 42 U.S.C. 9609(a)(1), for violations of the following substantive provisions of CERCLA may be sought under these proposed procedures: Violations of sections 103 (a) and (b), 103(d) (2) and 108, violations of orders issued under Section 122(d)(3) and, pursuant to section 122(l) of CERCLA, failures or refusals to comply with administrative orders, consent decrees or other agreements entered into under section 122 of CERCLA. 42 U.S.C. 9603 (a), (b), and (d)(2), 9608, 9622 (d)(3) and (l).

Paragraphs (5) through (8) set forth the violations of EPCRA, 42 U.S.C. 11001 *et seq.*, that may be administratively adjudicated under these proposed rules. EPCRA violations arising under Section 313, 42 U.S.C. 11023, are outside the scope of this proposal. See discussion above in introductory preamble.

Paragraph (5) provides that violations of section 304 of Title III, 42 U.S.C. 11004 (emergency notification), are subject to so-called "Class I" civil penalties under section 325(b)(1)(A), 42 U.S.C. § 11045(b)(1)(A). Paragraph (6) sets forth that violations of section 312 of EPCRA, 42 U.S.C. 11022, are subject to civil penalties assessed pursuant to section 325(c)(1) of EPCRA, 42 U.S.C. 11045(c)(1). Paragraph (7) provides that violations of Sections 311 (material safety data sheets) and 323(b) (provision of information to health professionals, etc.), 42 U.S.C. 11021 and 11043(b), and failures to furnish information pursuant to sections 322(a)(2) of Title III (pertaining to trade secrets), 42 U.S.C. 11042(a)(2) are subject to penalties assessed under section 325(c)(2), 42 U.S.C. 11045(c)(2). Paragraph (8) provides that trade secret claims under section 325(d)(1), 42 U.S.C. 11045(d)(1), are subject to penalties as provided therein.

(b) *Notice of respondent's opportunity for hearing.* This subsection requires the complainant to notify the respondent of his right to a hearing to determine whether or not there was a violation of applicable law, the consequences of his failure to respond to the administrative complaint, and the applicability of this Part. This notification may occur by cover letter to the administrative complaint, inclusion in the text of the complaint, or any other appropriate means. The requirement in paragraph (3) may be satisfied by noting the applicability of the rules and where they are published.

(c) *Service of administrative complaint.* Special service rules apply to the service of the administrative complaint to ensure that all parties receive effective notice of the commencement of the action. Where the respondent is a corporation, the administrative complaint must be addressed to the attention of either the president of the corporation or the corporation's registered agent for service of process. However, where respondent is any entity, including a corporation, partnership or unincorporated association, the signature of any employee or agent of respondent authorized to sign for

certified mail in the ordinary course of that employee's duties is sufficient to properly complete service of the administrative complaint under these rules. Where respondent is a natural person, service is complete upon the signature of any person of suitable age and discretion at respondent's residence or, if the violation is alleged to have occurred in connection with respondent's proprietorship of a business or other entity, by such signature at the address of said entity. If respondent is a State, a municipal corporation, or other governmental entity, the administrative complaint should be addressed to the chief executive officer of such entity or his authorized agent to receive certified mail. If the complainant is unable to complete service either personally or by certified mail, the complainant may complete service by any other means consistent with the requirements of due process.

(d) *Notice of administrative complaint.* This provision implements the requirements of the Safe Drinking Water Act and section 309(g) of the Clean Water Act to provide public notice upon the initiation of an administrative action. See, *e.g.*, section 309(g) of the CWA, 33 U.S.C. 1319(g). The complainant is to provide public notice no later than the time of proof of service. Consequently, based on the most efficient approach, a complainant may provide such public notification at any time between the issuance of the complaint and the receipt of proof of service. Because this statutory requirement describes a duty owed by the Agency to the public, failure by the Agency to provide timely notice would not provide a respondent with any defense to an action under this part. If the Agency provides such notice through publication, its date of submission of the notice to the publication, rather than the date of publication itself, satisfies the public notification deadline of this subsection.

This provision requires that those members of the public that have requested notice be given such notice by first-class mail. The Agency does not by this provision intend to obligate itself to seek out individual members of the public on a case-by-case basis. Rather, the Agency will attempt to inform members of the public of the initiation of actions under these proposed rules where, for example, the Agency has set up an appropriate mailing list and invited members of the public to place their names on the mailing list, or where a member of the public requests that it be informed of the initiation of certain types of actions by the Agency. This subsection also provides that potentially affected members of the public be given notice in a manner reasonably calculated to provide such notice. Again, the Agency does not intend by this provision to obligate itself to personally notice to all members of the public potentially affected by an administrative proceeding commenced pursuant to these proposed rules. Rather, the Agency intends ordinarily to fulfill its statutory obligation by, for example, publishing notices of the commencement of the action in a local newspaper of general circulation or through other media.

The Agency expects that in many cases affected States will place themselves on notification mailing lists. Nothing in this part prevents a complainant from notifying any State or any person of the commencement of an action.

(e) *Opening of the administrative record.* The complainant shall open the administrative record by filing the administrative complaint and a certificate of service with the Hearing Clerk upon mailing of the administrative complaint. The complainant may file additional documents, such as any documentation underlying allegations as to liability, anticipatory motions, and any cover letter sent to the respondent. Documents filed under this subsection are available to the public under § 28.17, although they are not yet certified as part of the administrative record by the Presiding Officer.

Nothing in this proposal requires the complainant to make public or file additional documents underlying the issuance of the administrative complaint before any prehearing exchange in an action. Ultimately, the submission of such documentation is required before the Presiding Officer certifies the administrative record to the Regional Administrator pursuant to § 28.27(a). In every administrative proceeding under this proposed part, including consent and default proceedings, there must be an identifiable administrative record, since the Regional Administrator must have access to the administrative record of the proceeding to make an independent inquiry into the appropriateness of the relief. See *Katzson Brothers, Inc.* v. *EPA*, 839 F.2d 1396 (10th Cir. 1988).

(f) *Anticipatory motions by complainant.* This subsection provides explicit authority supporting an accelerated motion practice that enables the Presiding Officer to act on the merits at the earliest possible time. See general discussion of this section above.

(g) *Notification of Agency decisionmaker.* This subsection requires the Hearing Clerk to notify the Presiding Officer, if there is a standing assignment of a Presiding Officer, or the Regional Administrator, if no Presiding Officer has been assigned, of the issuance and completion of service of the administrative complaint. If no Presiding Officer has been assigned, the notification of the Regional Administrator pursuant to this subsection serves to inform the Regional Administrator of the need to appoint such an officer by the time required by subsection (h) of this section.

(h) *Designation of Presiding Officer.* The proposed rules require the Regional Administrator to appoint the Presiding Officer within twenty days of the issuance of the administrative complaint. The Regional Administrator may accomplish this by either appointing a Presiding Officer to each action on an individual basis or, at his option, by implementing a standing or rotational appointment system. In some Regions, the Regional Administrator may authorize the standing Judicial Officer to act as Presiding Officer until a response is filed.

The twenty day rule is intended to provide the parties with a forum for the resolution of disputes prior to the deadline for respondent's filing of his response pursuant to § 28.20 of the proposed rules. If the Regional Administrator, for whatever reason, fails to appoint a Presiding Officer within twenty days, jurisdiction of the Agency to initiate the action is not affected. However, the right of the respondent to make any preliminary legal argument shall not be prejudiced by the Regional Administrator's delay.

Section 28.17 Availability of Documents Filed with the Hearing Clerk

This section allows members of the public an opportunity to review information relating to the Agency's enforcement action. Documents on file with the Hearing Clerk do not necessarily represent the administrative record on which the Regional Administrator will base his decision in the action. Certification of the complete record does not occur until the Presiding Officer transmits a recommended decision. In addition, some documents held by the Hearing Clerk may be ineligible for inclusion in the administrative record. See § 28.2(b).

Subsection (a) addresses the Agency's obligation to honor valid claims of confidential business information made by the respondent, when such claims

have been properly filed with the Agency.

Subsection (b) imposes a mandate on the Agency to treat the filed documents in such a way as to reasonably guard against tampering, destruction, loss or theft.

Subsection (c) addresses and imposes existing Agency rules governing reproduction costs. Fees for reproduction of records are applicable to this proposed rule.

Section 28.18 Withdrawal or Amendment of Administrative Complaint.

This section establishes the forms and deadlines for withdrawal or amendment of the administrative complaint by the complainant and for notifying the other participants of any withdrawal or amendment.

(a) *Withdrawal of administrative complaint.* This subsection provides that the complainant may withdraw the administrative complaint without prejudice (1) as of right any time before the applicable deadline of § 28.20 (a) and (b), or the respondent's response, whichever is sooner; or (2) by stipulation with the respondent or by permission of the Presiding Officer at any time after the applicable deadline prescribed in § 28.20 (a) and (b) or the respondent's response, whichever is sooner.

(b) Amendment of administrative complaint. This subsection provides that the complainant may amend the complaint (1) as of right, any time before the expiration of the applicable deadline of § 28.20 (a) and (b) of the proposed rule or the respondent's response, whichever is sooner; or (2) by stipulation with the respondent or permission of the Presiding Officer after expiration of the applicable § 28.20 (a) and (b) deadline or the respondent's response in the action.

Section 28.19 Consultation with State. [Section 309(g) of the Clean Water Act only]

Section 309(g)(1) of the Clean Water Act, 33 U.S.C. § 1319(g)(1), specifies that "after consultation with the State in which the violation occurs" the Administrator may "assess a class I civil penalty . . . under this subsection." This section implements that statutory requirement for consultation with the appropriate State agency. The State's opportunity for consultation must occur within thirty days of the respondent's receipt of the administrative complaint. The Agency may provide an opportunity for consultation by any reasonable means, including notifying the appropriate State official of the initiation of the action by letter, by telephone, or in person. The record of the fact of consultation or, as applicable, the opportunity for consultation, shall become part of the administrative record. The substance of the consultation is not required to be part of the administrative record. See § 28.2(b)(4).

The Agency is under no statutory obligation, and no obligation imposed under this proposed part, to consult with the affected State prior to the initiation of an action under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g). The statute requires consultation only once and only before assessment of a civil penalty, which is final Agency action. EPA has decided in this proposal to curtail its discretion to consult with the affected State at later stages of a section 309(g) action only because such late consultation would interfere with the timely and efficient administration of this part. EPA interprets the statutory consultation requirement to govern the federal relationship between two sovereigns—the affected State and the United States—and not to invest any defenses or rights in a respondent in a Clean Water Act enforcement action.

Section 28.20 Responses to Administrative Complaint.

This section of the proposed rules establishes the deadlines for the respondent and (in the case of the Safe Drinking Water Act and Section 309[g] of the Clean Water Act) the public's participation in actions undertaken pursuant to these proposed rules. It also provides for the respondent's amendment of his response, and describes the effect of the respondent's failure to make a timely response or to deny an allegation as to liability in the administrative complaint.

(a) *Respondent's deadline.* This subsection requires the respondent to reply to the administrative complaint by filing with the Hearing Clerk a timely response, which is to become part of the administrative record pursuant to § 28.2(b)(9). This response is due within thirty days of receipt of the administrative complaint or, if applicable, within thirty days of receipt of the Regional Administrator's disapproval of a proposed consent order. See § 28.2(u) for the required elements of a response. If a respondent does not timely provide a response, he is not a "party" or "participant" under this proposed part, and is subject to the admission and waiver provisions of this section.

An administrative action under this part may conclude in a consent order without the filing of a response if certain preconditions are met. In a CERCLA, EPCRA, or CWA 311(b)(6) action, the parties may reach an agreement before the response is due. In that situation, the action concludes upon their compliance with § § 28.2(i) and 28.22(a)(1).

In a proceeding under the Safe Drinking Water Act or section 309(g) of the Clean Water Act, the parties cannot conclude an action without allowing time for commenters to participate. The procedure varies depending on whether the commenters' deadline precedes the respondent's, and whether any commenters participate in the action. See §§ 28.16(d) and 28.20(c). If the commenter's deadline precedes the respondent's § 28.20(a) deadline, and no commenter participates in the action, the parties may conclude the action before the response is due under § 28.20(a). In many cases, however, the commenter's deadline will fall after the respondent's § 28.20(a) deadline. In that circumstance, if a consent order is to moot the requirement for a response, the parties must extend the respondent's deadline under § 28.20(b) beyond the commenters' deadline. If no commenters participate in the action, the parties may conclude the action without the filing of a response by memorializing a consent order before the respondent's § 28.20(b) deadline. § 28.22(a). If a commenter participates, the parties may lodge a proposed consent order with the Regional Administrator under § 28.22(b). If the Regional Administrator approves the lodged consent order pursuant to § 28.28(b), no response need be filed. See § 28.22 (a), (b) (1) and (2).

(b) *Extension of respondent's deadline.* Paragraph (1) allows the complainant, in concert with the respondent, to extend the respondent's deadline to respond to the administrative complaint up to 120 days after the respondent's receipt of the administrative complaint. Pursuant to paragraph (2), upon notice of an offer of a penalty settlement by the respondent which has been timely filed with the Hearing Clerk, the deadline for the response is extended by thirty days. The purpose is to allow the parties to engage in informal settlement negotiations. The substance of the offer shall not be filed with the Hearing Clerk, but only a notice as to the fact of its existence. Presiding Officers may not become involved in the substance of any settlement offers. See preamble to § 28.4(c)(5).

The Presiding Officer may not extend a respondent's deadline.

The Agency considers approximately four months a reasonable period of time to allow the parties to attempt to reach a settlement of the action, while imposing

a time limit on negotiations that will assist in the timely resolution of actions. These proposed rules impose no obligation on the part of the Agency to settle, or to provide any extension. Any extension granted must be by a written stipulation filed with the Hearing Clerk within thirty days after service of the administrative complaint upon the respondent. These rules do not authorize any extension of a respondent's deadline based upon the date of the Regional Administrator's disapproval of a proposed consent order under § 28.28(b)(5). Consequently, if the Regional Administrator disapproves a proposed consent order more than eighty nine days after service of the administrative complaint, pursuant to this subsection the respondent's deadline for a response is not later than thirty days after the disapproval.

EPA favors the resolution of disputes in the most timely and effective manner possible, and is particularly concerned that it not burden small or unsophisticated respondents with unnecessary proceedings. During the time before the answer to the complaint is due, the parties may agree to alternative forms of dispute resolution, such as various forms of arbitration or mediation. Use of these means may result in a consent order, or proposed consent order, or may result in the voluntary withdrawal of the complaint by the Agency, if that is appropriate. Consequently, these proposed rules favor the settlements of disputes. If, however, these alternative approaches do not resolve the dispute at this early stage, the respondent would have to file an answer to the administrative complaint by the deadline provided under § 28.20 (a) or (b), whichever applies. EPA solicits comments on the use of alternative dispute resolutions prior to the answer being filed in an action and solicits suggestions as to types of appropriate alternatives.

(c) *Deadline for public comment and participation.* This subsection applies only to actions undertaken pursuant to the Safe Drinking Water Act and section 309(g) of the Clean Water Act. See section 1423(c)(3) of the SDWA, 42 U.S.C. 300h–2(c)(3), and section 309(g)(4) of the CWA, 33 U.S.C. 1319(g)(4), which require an opportunity for public participation in these proceedings. The Agency recognizes that an individual may wish to submit comments for the record, although not become an active participant in the proceeding. In that case, such timely comments within the scope of the action will become part of the administrative record of the action, pursuant to § 28.2(b)(9). (Comments that are untimely or go beyond the scope of the administrative complaint, however, would not qualify under § 28.2(b)(9) and (15) to become part of the administrative record.) If the person wishes to become a participant—a "commenter" per the definition of § 28.2(g)—that person would timely have to identify himself to the Hearing Clerk as a commenter, submit appropriate comments or note what allegations in the complaint he will address through his participation in the action, and provide the Clerk with a return address. The thirty day deadline provided in this subsection should run almost concurrently with the thirty days provided to the respondent, since under § 28.16(d) of the proposed rules, the public notice is to be provided "no later than the time of proof of service of the administrative complaint."

Although the public may submit comments in proceedings under CERCLA, EPCRA and CWA 311(b)(6), such comments do not automatically become part of the administrative record of the action unless admitted by the Presiding Officer pursuant to § 28.2(b)(15). These proposed rules do not provide any opportunity for a member of the public to become a participant in a CERCLA, EPCRA or CWA 311(b)(6) proceeding.

(d) *Admission.* This subsection provides that if the respondent fails to make a timely response, or fails to deny any allegation included in the administrative complaint, the unopposed allegations as to liability are deemed admitted for purposes of the action, and may not later be contested.

(e) *Waiver.* This subsection provides that if the respondent fails to make a timely response, the respondent shall have waived its opportunity to appear in the action for any purpose, including receiving notice of further proceedings or opposing the arguments of Agency counsel in any default penalty proceeding under § 28.21 of these proposed rules. See also *Moose Oil Co.* v. *United States,* Civ. No. 88–1178E (N.D.N.Y. August 6, 1990) and *Regis* v. *United States,* Civ. No. 88–1179E (N.D.N.Y. August 6, 1990) (Holding that timely appeals to district court under SDWA § 1423(c)(6), 42 U.S.C. 300h–2(c)(6), would not be upheld on due process grounds when the respondents had failed to avail themselves of their right to request a hearing and the Agency had substantial evidence in the record to support its orders.)

(f) *Amendment of response.* This subsection governs the amendment of responses to the administrative complaint.

Paragraph (f)(1) authorizes a respondent who has timely responded to the complainant's administrative complaint to amend his response no later than thirty days after the complainant amends the administrative complaint pursuant to § 28.18.

Paragraph (f)(2) authorizes a respondent to amend his response up to thirty days before the date set for a summary determination of liability under § 28.25 or a liability hearing under § 28.26, whichever occurs first, (1) if the complainant agrees or (2) if the Presiding Officer permits only "upon a finding of good cause shown, and a finding that such an amendment would not prejudice the complainant." Good cause may be present, for example, if the respondent can show that he had incompetent counsel, or was unable to help in his defense. The complainant may be prejudiced, for example, if allowing amendment of the response would provide the respondent with an unfair advantage, or an inappropriate delay.

Section 28.21 Default Proceedings

If the respondent fails timely to respond pursuant to § 28.20 (a) or (b), there are three important consequences which ensue. First, all allegations in the complaint which are unanswered or not denied are deemed admitted. Second, and most importantly, if the complainant has stated a cause of action, the respondent will be deemed in default. Third, the respondent shall have waived its opportunity to appear in the action for any purpose, including contesting the complainant's arguments for the imposition of a penalty. A respondent who fails timely to respond to the administrative complaint is not defined as a "participant" per § 28.2(l). Further, a defaulting respondent waives the right to appear in the action "for any purpose." § 28.20(e). Consequently, the Clerk is not required under § 28.9(b) to notify a defaulting respondent of a § 28.21 default proceeding.

If a respondent is sanctioned by a Presiding Officer pursuant to § 28.4(a) with a finding of default, as to the complainant's claim or claims to which there has been a default, the respondent is no longer a "party" or "participant" in the action. See § 28.2(l) and (m). In the case of the sanction of default, which the Agency expects a Presiding Officer to consider in only the most egregious circumstances of misconduct or recalcitrance, the person in default, for purposes of this section, from that time forward is treated for the purpose of the defaulted claim as if he had failed timely to respond pursuant to § 28.20 (a)

or (b). Default proceedings are bifurcated into a determination of liability and the determination of an appropriate remedy.

(a) *Determination of liability.* Under subsection (a), the only factor to be considered by the Presiding Officer in determining liability is whether the complaint states a cause of action. If the Presiding Officer finds that the complaint states a cause of action, he is to direct the entry of the respondent's default in the administrative record. At that point, the allegations of fact and conclusions of law as to liability included in the administrative complaint become recommended findings of fact and conclusions of law that the Presiding Officer will transmit in a recommended decision to the Regional Administrator. As noted earlier, all allegations unanswered or not denied are deemed admitted. If the Presiding Officer determines that the complaint does not state a cause of action, the Presiding Officer shall permit amendment of the complaint or shall recommend that the Regional Administrator withdraw the administrative complaint. Any withdrawal of an administrative complaint under this proposed Part is without prejudice, since there is no ruling on the merits of the action. See § 28.18(a).

Under § 28.4(c)(7) of this proposed Part, the Presiding Officer may not "[d]ismiss the administrative complaint."

(b) *Determination of remedy.* Where a determination of liability has been made by the Presiding Officer and made part of the administrative record by the Hearing Clerk, the Presiding Officer shall require the submission of a written argument by the complainant regarding the appropriate civil penalty to be assessed. The complainant must provide such an argument even if the administrative complaint requested the assessment of a specific sum. This submission should include any supporting documents and must be submitted within thirty days of receipt of the entry of respondent's default. If complainant submits such information upon opening the administrative record under § 28.16(e), there is no need for the thirty day period to run. A failure by the complainant to provide written argument to the Presiding Officer under this section may result in a failure by the complainant to carry its burden of persuasion as to remedy. As the respondent has waived its opportunity to appear in any action by failing timely to respond, this communication by the complainant to the Presiding Officer is not a prohibited communication. See § 28.2(p)(1).

Depending on the statute under which the complainant is proceeding, specific statutory factors must be addressed in the written argument supporting the proposed penalty. For penalty actions under section 309(g) of the CWA, CERCLA and section 325(b) of EPCRA, Congress has instructed the Agency to consider "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." Section 109(a)(3) of CERCLA, 42 U.S.C. 9609(a)(3), and section 325(b)(1)(C) of EPCRA, 42 U.S.C. 11045(b)(1)(C). See also section 309(g)(3) of CWA, 33 U.S.C. 1319(g)(3) (substantively identical provision). The statutory factors applicable to actions under section 311(b)(6) of the Clean Water Act are "the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require." 33 U.S.C. 1321(b)(8). For penalty actions under the SDWA, the argument is limited to the seriousness of the respondent's violation or violations, any economic benefit respondent enjoyed resulting from the violation, any history of such violations, any good faith efforts by the respondent to comply with the applicable requirements, the economic impact of the penalty on the respondent, and such other matters as justice may require. Section 1423(c)(3)(B) of SDWA, 42 U.S.C. 300h-2(c)(3)(B).

The complainant has the burden of presenting arguments to the Presiding Officer—the burden of persuasion—regarding the assessment of an appropriate civil penalty. See § 28.10(e). The complainant, however, does not have the burden of persuading Agency decisionmakers regarding the civil penalty based on the respondent's inability to pay, or regarding the respondent's economic savings, if the respondent has failed to come forward with that information by the applicable deadline. See §§ 28.10 (b)(2) and (e) and 28.24 (b)(2) and (c). By defaulting, the respondent has admitted all allegations and has waived its right to appear in the action. A default results in an unrebuttable presumption that the respondent can pay any assessed penalty and has enjoyed an economic benefit. See §§ 28.10(b) and 28.20 (d) and (e). In the absence of any showing by the complainant as to the amount of economic benefit, however, the Presiding Officer may take appropriate official notice of any relevant information on that subject, or may assign a token amount as the economic benefit.

In addition, for SDWA actions in which the complainant is requesting compliance, the burden of persuasion regarding the reasonableness of the requested relief rests with the complainant.

The Presiding Officer shall prepare and transmit his recommended decision to the Regional Administrator, as outlined in § 28.27, after reviewing the written argument and the administrative record. The remaining procedures are identical to those used for contested actions. See Subpart D—Post-Hearing. If the Regional Administrator issues an order assessing a penalty, the Regional Administrator shall make findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of applicable law, shall set forth conclusions of law, and shall assess an appropriate penalty after taking into account, and providing a discussion of, the application of penalty factors he must consider under applicable law. This requirement explicitly addresses the decision in *Katzson Brothers, Inc.* v. *EPA*. The respondent shall pay any civil penalty assessed no later than thirty days following the effective date provided in the order pursuant to § 28.31. Upon the failure of a respondent to pay an assessed penalty, the Agency may collect the penalty under applicable law. See, e.g., section 309(g)(9) of the Clean Water Act, 33 U.S.C. 1319(g)(9).

Section 28.22 Consent Order

(a) *Agreement of parties.* The parties may agree to settle any administrative action brought under this proposed rule by entering into a consent order at any time prior to the taking of final Agency action. This settlement must comply with § 28.2(i). Except in cases in which a commenter has participated under the Safe Drinking Water Act or section 309(g) of the Clean Water Act, the action may not conclude until the parties file the consent order with the Hearing Clerk and provide a copy to the Presiding Officer. The Presiding Officer has no authority under these rules to disapprove or void a consent order

signed by the parties pursuant to this section. Any consent order signed by the parties under this section has the force and effect of an order signed by the Regional Administrator under § 28.28 upon filing with the Hearing Clerk, except that the signatory respondent's waiver of his appeal rights under this subsection and § 28.2(i)(6) provides for greater finality. In the case of a SDWA or CWA 309(g) action in which a commenter participates, the Regional Administrator must approve and issue each proposed consent order before it may become effective. Under the SDWA and CWA 309(g), the effective date of a consent order is subject further to the rights of commenters. See § 28.28(f) (1) and (3).

The rules limit the scope of the settlement to the allegations set forth in the administrative complaint and the legality of the relief agreed to by the parties. See §§ 28.2(i) and 28.28(b)(1).

(b) *Submission of proposed consent order.* This subsection sets forth procedures for the consideration of consent orders by the Regional Administrator in Safe Drinking Water Act or Clean Water Act 309(g) actions in which a commenter participates.

In other actions involving settlement under this part, the parties may conclude the action (see subsection [a] of this section), but because all timely public comment under the SDWA and CWA 309(g) is part of the administrative record, and because the final Agency action must be based on the administrative record, under paragraph (b)(1) the thirty day public comment period set forth by § 28.20(c) must run before parties in a SDWA or CWA 309(g) action can lodge a proposed settlement. It also requires that the parties, upon the request of the Regional Administrator, provide a written explanation of the legality of the proposed order. See also § 28.10(c). No consent order lodged under this paragraph may be given effect unless the Regional Administrator approves it pursuant to § 28.28(b). Consequently, pursuant to § 28.22 (b)(1)(i) and (b)(4), all timely public comments will be made available to the Regional Administrator before he makes a decision on whether or not to approve the proposed consent order. Under section 309(g) of the Clean Water Act, the delay in lodging the consent order until the comment period has run will also minimize the possibility that the Regional Administrator would be required under § 28.30(b) to set aside an order on consent for failure to consider material evidence, since commenters would have had an opportunity to provide the Agency decisionmaker with necessary material information to consider in making a decision on the legality of the proposed consent order. See also section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. § 1319(g)(4)(C). The parties may satisfy the requirement of subparagraph (b)(1)(ii) in whatever form may be appropriate, from a cover letter to a brief with supporting documentation.

Paragraph (b)(2) provides for the automatic suspension of proceedings upon the lodging of the consent order.

Paragraph (b)(3) requires that the complainant shall serve any non-signatory participant, i.e., any commenter or any non-settling respondent, with a copy of the proposed consent order when the consent order is lodged, and notify the participant of the suspension of the proceeding pending action of the Regional Administrator. The non-signatory participants may not communicate with the Presiding Officer or Regional Administrator regarding the merits of the proposed consent order. See §§ 28.2(p)(2) and 28.12(c)(2).

Paragraph (b)(4) recites the obligations of the Hearing Clerk upon the lodging of a SDWA or CWA 309(g) proposed consent order. Under the Rules, the Hearing Clerk shall not provide the Presiding Officer with a copy of the proposed consent order, but only notification that is has been received and transmitted to the Regional Administrator. The Presiding Officer needs to know of the lodging of the proposed consent order in order to oversee the suspension of the proceeding pursuant to § 28.22(b)(2) of the proposed rules. However, because the Presiding Officer may be called upon to provide the Regional Administrator with a recommended decision in the event of the Regional Administrator's disapproval of the proposed consent order, the Presiding Officer is not to read or discuss with any person the proposed settlement terms. See §§ 28.2(p)(2) and 28.13(a).

Paragraph (b)(5) establishes an inclusive, alternate definition of the administrative record for proceedings concluded pursuant to this subsection and § 28.28(b). If the parties have agreed to settle their dispute, there is no need to limit the scope of the administrative record underlying that resolution, or to expend Agency resources determining the boundaries of an appropriate record. However, in the case of a partial settlement, use of this alternative definition does not support the inclusion in the administrative record in the still-active remainder of the action of any documents filed with the Hearing Clerk. The certifiable administrative record for any remaining issues is defined by § 28.2(b).

A proposed consent order is not filed with the Hearing Clerk by the parties, but lodged. It therefore becomes part of the administrative record only if the proposed order is ultimately approved. See § 28.28(d). Paragraph (b)(5) ensures, in concert with §§ 28.2(p)(2) and 28.12(a) (defining and prohibiting prohibited communication) that, in the event the Regional Administrator rejects a proposed settlement and the action is thereafter adjudicated on the merits, the Presiding Officer does not make a recommended decision to the Regional Administrator based in any part on the parties' settlement positions previously rejected by the Regional Administrator, and further ensures that the Presiding Officer is not involved in any settlement discussions between the parties. See also §§ 28.4(c)(3) and 28.13(a) (concerning grounds for requesting an alternate Presiding Officer).

Additionally, the rules contemplate that the Presiding Officer will not be privy to the actual terms of the settlement unless the consent order is approved and issued by the Regional Administrator. § 28.5(h). Compare §§ 28.2(p)(2), 28.4(c)(5), 28.13(a) and 28.22(b)(5) with § 28.27(a)(1) (providing for the Presiding Officer's certification of the administrative record). This limitation is intended to avoid prejudicing the Presiding Officer in the event that the Regional Administrator disapproves the proposed settlement, necessitating that the action continue. This approach is similar to that employed by the federal court system in its dual use of so-called settlement judges as well as trial judges. The Agency does not intend that either party should risk compromising its litigation position by agreeing to a settlement proposal that would be available to the Presiding Officer; this would discourage settlement, and the Agency intends by these rules to promote the settlement of disputes.

Section 28.23 Prehearing Conference

This section provides for a prehearing conference between the Presiding Officer and the parties in order to consider matters which may expedite the disposition of the proceedings, as well as to set the time and place for further proceedings. The Agency anticipates that, upon the filing of a response, the Presiding Officer will promptly issue a directive to the parties which (1) schedules the time, and, if the conference is conducted in person, the place of the prehearing conference; and (2) advises the parties of the matters

which will be the subject of the prehearing conference.

(a) *Time and form of conference.* To promote the efficient and timely initiation and administration of actions brought under this rule, § 28.23 establishes a strict time frame in which the Presiding Officer must hold the prehearing conference. Accordingly, subsection (a) requires a prehearing conference be held no later than thirty days following the filing of the response. In all cases the Presiding Officer shall memorialize his rulings no later than fifty days following the filing of a response. See § 28.23 (a) and (d). In some cases, it may be advisable for the parties to appear before the Presiding Officer in person; however, the Agency expects that in many cases, the prehearing conference will be conducted by telephone.

(b) *Purposes of conference.* This subsection sets forth the purposes of the prehearing conference. If no party requests an information exchange, the Presiding Officer may not schedule one. The Presiding Officer may, within his discretion, further limit the scope of the information exchange (see also § 28.24(b)), although the Agency does not anticipate such limitations occurring unless the parties have entered into a stipulation that moots the usefulness of a more complete information exchange.

If the complainant has already filed with the Hearing Clerk all documentation the Agency intends to provide in the action, and states that the Agency seeks no further information from the respondent, the Presiding Officer may forego all but supplementary exchanges, since elimination of the initial exchange would speed the action by as much as sixty days without prejudicing either party.

(c) *Time and place of further proceedings.* Under paragraph (c)(1), the Presiding Officer is to set a time and place for a proceeding on the merits, such as a summary determination of liability or an accelerated recommended decision under § 28.25 or a hearing under § 28.26. The proceeding may be scheduled to occur no sooner than thirty days following the prehearing conference. This interval allows the parties time to prepare. Under paragraph (c)(2), either party may, however, within ten days of receipt of notice of the scheduling of the further proceedings, request in writing that the Presiding Officer schedule such proceeding at a different time or location.

(d) *Prehearing order.* Subsection (d) provides that, within twenty days following the prehearing conference, the Presiding Officer shall issue a written prehearing order to memorialize the rulings the Presiding Officer made at the prehearing conference, including rulings on such procedural issues as the time and place of further proceedings and, if appropriate, deadlines for the submissions of stipulations of fact or amendments to the pleadings. The Presiding Officer may also set forth any stipulations of fact or conclusions of law agreed to by the parties during the prehearing conference. The Agency is aware that certain unforeseen circumstances may arise after the prehearing order is issued and therefore subsection (d) provides that the Presiding Officer may modify the prehearing order as necessary to aid in the efficient administration of justice. The deadline for the parties to complete the exchange of information as provided for in the prehearing order may not be modified under this subsection. In Clean Water Act and Safe Drinking Water Act actions, however, the Presiding Officer may delay the completion of an exchange pursuant to § 28.24(c)(2).

Section 28.24 Information Exchange

This section establishes the authority of the parties to require the provision of information under the relevant administrative enforcement hearing provisions of applicable law. Nothing in this section or this proposed part affects the right of the Agency to gather information under other applicable law, such as section 308 of the Clean Water Act, 33 U.S.C. 1318, section 1423(c)(8) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(8), or section 104(e) of CERCLA, 42 U.S.C. 9604(e), or the right of any person to request information of the Agency under other applicable law. See § 28.1.

(a) *Authority.* This subsection sets forth the exclusive role of this section in information exchanges, and provides that this section is available only if a respondent is a "party" in the action. See §§ 28.2(m) and 28.20(e). The Presiding Officer has no authority under this part to require parties to provide any more information than this section explicitly authorizes.

(b) *Scope of exchange.* Discovery is not constitutionally or statutorily required in this forum. See *Chemical Waste Management* v. *EPA,* 873 F.2d 1477 (D.C. Cir. 1989) and *NLRB* v. *Interboro Contractors, Inc.,* 432 F.2d 854 (2d Cir. 1970). The Agency proposes to strictly limit administrative discovery to expedite and simplify litigation under this part. This approach is implicitly authorized by Congress, since it helps the Agency carry out the purposes of the administrative enforcement authorities of the relevant statutes. See the legislative materials referenced in the discussion above of § 28.1 and Davis, Administrative Law Treatise, vol. 1, § 5.03. Operation of this part does not prevent the parties from voluntarily agreeing to widen the scope of a prehearing exchange; they may stipulate to other means or subjects of discovery.

Under subsection (b), the information that may be exchanged is limited to (1) documents intended to be introduced at proceedings under this part for purposes other than the impeachment of a witness' testimony and not already filed with the Hearing Clerk under § 28.16(e) (see §§ 28.2[b][1] and 28.16[e] regarding documents the complainant may have filed at the time the action is initiated); (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the respondent relating to the respondent's inability to pay a civil penalty or relating to any economic advantage accruing to the respondent as a result of his alleged violations of law. Other forms of discovery, including the taking of depositions, issuance of requests for the production of documents, and requests for admissions, are not permitted unless stipulated to by the parties pursuant to subsection (a). Documents filed by the complainant with the Hearing Clerk pursuant to § 28.16(e) are already available to adverse parties under § 28.17.

(c) *Timing of exchange.* This subsection governs the timing of the information exchange. Paragraph (1) applies to actions under all applicable laws; paragraph (2) applies only to the Clean Water Act and Safe Drinking Water Act.

The sixty day deadline in paragraph (c)(1) ensures that litigation under this part be as quick and efficient as possible, and does not allow undue delays in scheduling information exchanges. If it would be more efficient, the Presiding Officer may schedule more than one round of information exchange, as long as the final round concludes within sixty days from the date of the prehearing conference. Where appropriate, and in particular in instances in which the complainant has announced the filing of its liability and remedy case and forgoes requesting additional information of the respondent, the Presiding Officer may eliminate all exchange except for supplemental exchange. See preamble discussion to § 28.16.

The sixty day deadline of § 28.24(c)(1) is not amendable by a prehearing order

issued under § 28.23(d), but in Clean Water Act and Safe Drinking Water Act actions, the Presiding Officer may extend the exchange deadline according to the terms of § 28.24(c)(2). Unlike CERCLA, for example, in which Congress expressed a preference for expedited settlements in a "special notice" provision under Section 122(e), 42 U.S.C. 9622(e), the CWA and SDWA contain no specific expedited settlement language. The Agency also anticipates that, unlike CERCLA and EPCRA, the CWA and SDWA violations subject to this part will not be primarily reporting violations. Litigation in water cases may at times require an extension of the sixty day information exchange deadline of § 28.24(c)(1).

Since the parties may extend the respondent's deadline to 120 days under § 28.20(c), participate in a prehearing conference 30 days following that, and receive 60 days for the exchange of information, they will have as much as seven months' grace before facing a final administrative discovery deadline. In addition, in all actions the parties may supplement the exchange of information with newly learned information regarding witnesses and the introduction of documents. EPA does not believe that seven months is an unreasonably short period of time in which to prepare for limited discovery in an administrative action.

Because new information concerning witnesses or documents may develop after an information response deadline passes, the parties may supplement information provided under § 28.24(b)(1); if a party chooses not to provide supplementary information, § 28.24(e) prevents use of such witnesses or documents. EPA therefore expects parties to voluntarily supplement information on these subjects. In any dispute over when a supplementing requested party became aware of the supplementary information, the requested party bears the burden of going forward and of proof, since that party has the best access to relevant facts.

The Agency does not anticipate that issues regarding a respondent's inability to pay a civil penalty or economic benefit received will materially change in the interim between the end of the prehearing order discovery period and a determination of remedy, and therefore, in considering the need for effective administrative penalty proceedings against the unlikelihood of a material change in a respondent's financial position, has struck a balance by not providing for an opportunity to supplement the information exchange on these issues. If the respondent does not provide information on those subjects by the prehearing order deadline (as it may be extended pursuant to § 28.24(c)(2) in Clean Water Act and Safe Drinking Water Act actions), subparagraph (e)(1) (iii) and (iv) sanctions apply.

The seven day rule is proposed to discourage the abusive litigation practice of delaying a response until the eve of a hearing, and then flooding the requestor with boxes of unsorted and often largely unresponsive documents. If such an event occurs, or if the Presiding Officer determines that the party providing the supplemental information had such information on hand before the initial exchange deadline set forth in the prehearing order, the sanctions of § 28.24(e) apply. Under § 28.24(c)(1), the Presiding Officer may not allow, without good cause, a party's supplemental response to a request for witness information to be provided later than seven days before a summary determination of liability under § 28.25, a liability hearing under § 28.26, or a determination of remedy, whichever occurs first.

Paragraph (2) provides that in a CWA or SDWA action, the Presiding Officer may under this paragraph, for good cause shown, extend the deadline for the exchange of information for a period not to exceed 30 days. Good cause for delaying the exchange includes the illness of a participant or the imminence (but not just possibility) of settlement, but does not include neglect or inattention by the parties or their counsel to the demands of the administrative action. The Agency intends that the Presiding Officer will promptly respond to a request for a delay. The parties may subsequently request individual extensions of up to 30 days each, based on a showing of good cause for each such subsequent request.

(d) *Service.* Subsection (d) provides that each party shall serve the information upon each other party and the Presiding Officer. Information exchanged under this section is not by definition of § 28.2(b) part of the administrative record of the proceeding, except as the Presiding Officer may include it under §§ 28.2(b)(15) and 28.27(a)(1). The proposed rules provide for service upon the Presiding Officer so that he may oversee compliance with the requirements of this section or summarily determine, on his own initiative, whether there are grounds for a summary determination of liability or for an accelerated recommended decision. The Agency expects the Presiding Officer to include all such relevant documents in the administrative record in any action in which the Presiding Officer *sua sponte* makes such a determination. See §§ 28.2(b)(15) and 28.25(d)(2).

(e) *Sanctions.* This subsection establishes both mandatory and discretionary sanctions for failure to comply with the requirements of § 28.24. See *ARCO* v. *U.S. Department of Energy,* 769 F.2d 771, 795–96 (D.C. Cir. 1984) (an administrative agency may establish sanctions in hearing procedures as part of a general grant of authority by the legislature). For example, if a party fails timely to provide the name and all supporting information regarding any witness it intends to present at a hearing under § 28.26 of this proposed part, such witness may not be presented. Similarly, if a party fails timely to produce a document it intends to introduce at such a hearing, that document may not be introduced to prove the truth of what it asserts. It may, however, be introduced solely to impeach the testimony of an adverse witness. The Presiding Officer may also impose additional sanctions that are just and proper (short of fine or imprisonment) on a party that fails to comply fully with the requirements of this section.

Section 28.25 Summary Determination and Accelerated Recommended Decision

This section authorizes summary adjudication of the allegations, without further proceedings, either upon the request of a party, or on the initiative of the Presiding Officer, whenever the Presiding Officer finds there are no material facts in dispute and a party is entitled to judgment as a matter of law. It also authorizes the Presiding Officer to accelerate the transmittal of his recommended decision to the Regional Administrator if there is no compelling need for additional fact-finding on remedy issues.

(a) *Initiation.* Paragraph (a)(1) provides that either party may request a summary determination or an accelerated recommended decision at any time after service of the response until 30 days before the time set for a § 28.26 liability hearing. The Presiding Officer may, however, for good cause shown, grant a party leave to file a request for summary determination at any time before the close of the liability hearing. Under paragraph (a)(2), the Presiding Officer may on his own summarily determine any of the allegations only after the time for the exchange of information pursuant to § 28.24 has run and only after he has

examined the entire administrative record. The Presiding Officer may accelerate the transmittal of the recommended decision upon finding liability in a summary determination or upon stipulation as to liability by the parties, if there is no need for further fact-finding as to remedy.

(b) *Response.* Under this subsection, the party against whom a request for summary determination or accelerated recommended decision has been made may serve a response to the request or a counter-request for summary determination or for an accelerated recommended decision, or both, within 20 days of his receipt of the request, unless (1) the Presiding Officer establishes a different schedule, or (2) the request was made more than twenty days before the response to the complaint was due, in which case the response to the motion cannot be due before the answer response deadline of § 28.20(a)(1). A party against whom a counter-request has been made may, under this subsection, serve a response to the counter-request within 20 days of his receipt of the counter-request. Such a response is not to be considered an argument in reply for purposes of § 28.8 of these rules.

The parties must serve copies of the request, the response, or the counter-request, as appropriate, on each participant in the action and file the original with the Hearing Clerk. See § 28.9. Whether the parties can submit reply briefs is discretionary with the Presiding Officer under § 28.8; however, the Agency anticipates that reply briefs, but not sur-reply briefs, will be allowed in most summary determinations. Any legal argument filed under this section must comply with the limitations in § 28.8.

(c) *Form and record of argument.* Although the Presiding Officer has the discretion to require oral argument of each participant under subsection (c), the Agency expects that the majority of requests and counter-requests for a summary determination or an accelerated recommended decision will be decided on the pleadings. The Presiding Officer may not entertain argument regarding settlement positions or allow collateral attacks on Agency action in argument under this section. This subsection also requires that the Presiding Officer maintain and file a permanent record of any oral argument under this section.

(d) *Basis for ruling.* This subsection sets forth the Presiding Officer's basis for ruling on summary determination or accelerating a recommended decision. This subsection provides the basis for a decision to grant or deny a request for summary determination, or on his own decide to grant a complete or partial summary determination. See also § 28.25(a)(2). "Compelling need," as used here, refers to the need of the Agency decisionmakers to have an adequate record upon which to base final Agency action and represents a stringent standard to be met before testimony is allowed on the subject of remedy. If the Presiding Officer finds that accelerating a recommended decision is not appropriate, he shall schedule a proceeding under § 28.26(h).

(e) *Determination of liability.* If the Presiding Officer renders a summary determination on less than all of the allegations, he shall issue a ruling which specifies which allegations are materially in dispute and which allegations are not materially controverted. The Presiding Officer shall promptly serve such ruling on each participant and the action shall continue on the allegations for which there is a material controversy. At the time the Presiding Officer resolves the remaining issues in the action, he shall incorporate the elements of his ruling into the recommended decision he transmits to the Regional Administrator.

(f) *Determination of genuine issue of fact.* If the Presiding Officer denies a request for summary determination, he shall promptly issue to each participant his ruling on the matter and the action shall continue on the factual allegations in dispute. His ruling is not subject to appeal. See § 28.14(a).

(g) *Supplementation of administrative record.* This subsection requires the Presiding Officer to include in the administrative record those exchanged documents that he considered in making a summary determination on his own initiative. Such documents may not become part of the administrative record unless the Presiding Officer files them with the Hearing Clerk pursuant to § 28.2(b) of this part.

Subpart C—Hearing

Section 28.26 Hearing

This section has been proposed to ensure a fair and impartial hearing for the respondent, advance the Congressional interest in timely and efficient administrative enforcement actions and, in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act, provide for the participation of commenters.

As stated throughout this preamble, the proposed rules attempt both to promote expeditious proceedings and to protect the interests of justice. Toward that end, the Presiding Officer is authorized under subparagraph (b)(2)(iv) to limit the number of witnesses and the scope and extent of both the direct and cross-examination and subsections (d) and (e) confirm that respondents (or other participants) may not make counterclaims or cross-claims within the administrative forum. See, *e.g.*, section 509(b)(2) of the Clean Water Act, 33 U.S.C. 1369(b)(2); see also §§ 28.1 and 28.4(c)(6). Should a party or other participant wish to engage in affirmative litigation with the Agency, it may do so to the extent authorized by statute or regulation in the appropriate judicial forum, or in another administrative forum.

(a) *Scope of hearing.* The proposed rules contemplate that the issues that must be administratively adjudicated under this part be limited to the resolution of disputed allegations necessary for the trier of fact to rule on liability issues. Consistent with the aim of streamlining the administrative adjudicatory process, the Agency encourages the Presiding Officer, where appropriate, to have the parties enter into stipulations setting forth all undisputed issues of fact and defining disputed issues of fact prior to the commencement of the hearing. See § 28.23(b)(1) (prehearing order). Remedy issues may be addressed pursuant to this section in the participants' closing argument, whether under subsection (i) or (k), or in the specific remedy proceeding established under subsection (h). Remedy issues are not addressed within the adjudicative context set forth in the remainder of this section.

(b) *Conduct of hearing.* The overriding intent of the procedures set forth for the conduct of liability hearings under this section is that the Presiding Officer conduct a liability hearing that meets all requirements of procedural due process. Subsection (b) sets forth the duties and authorities of the Presiding Officer in conducting a proceeding to determine liability in an action under this part.

(c) *Testimony.* Subsection (c) provides for the taking of testimony in any form that is most efficient under the circumstances, at the discretion of the Presiding Officer. The Agency anticipates that the most efficient form of testimony may vary from program to program. In water actions, for example, EPA anticipates the primary use of oral testimony; in CERCLA actions, EPA expects written testimony to predominate. No matter what form of testimony is permitted, the proposed rules contemplate that the Presiding Officer will make adequate provision to ensure that each party retains its right of cross-examination if the witness is

available to testify or is subject to a subpoena.

(d) *Admission of evidence.* As is typical in administrative proceedings, strict adherence to the Federal Rules of Evidence is not required by the proposed rules. With one exception, all testimony or documentation that is "relevant, material or of significant probative value," including hearsay, is admissible, as long as the witness presenting the information is subject to cross-examination by any opposing party. See § 28.26(f).

The fact that the Presiding Officer is not required to apply the Federal Rules does not preclude the Presiding Officer from relying on the Federal Rules (or other evidentiary rules) as guidance, in whole or in part, in making evidentiary rulings in a liability hearing. The only requirement under this part is that all evidence admitted meet the criteria for admissibility set forth above. But see, limitation on scope of cross-examination in § 28.26(f). Where authenticity or identification is in dispute, this subsection also authorizes the Presiding Officer to require the authentication of any writing or the identification of voice communications.

(e) *Official notice.* The substantive standard for the taking of "official" notice under this subsection is derived from Rule 201 of the Federal Rules of Evidence. Like the Federal Rule, the proposed rule is intended to govern only notice of adjudicative facts, not legislative facts. "Adjudicative facts," are described in the Notes of the Advisory Committee on Proposed [Federal] Rules as those facts "to which the law is applied in the process of adjudication." Unlike the Federal Rule, however, under the proposed rule, the Presiding Officer's decision to take official notice is discretionary in all cases, whereas Federal Rule 201(d) requires the court to take judicial notice "if requested by a party and supplied with the necessary information." Further, the Presiding Officer may not take official notice of facts relating to settlement, as described in § 28.4(c)(5), or facts relating to a person's challenge to a final State or Agency action.

(f) *Cross-examination.* Subsection (f) has been designed to be generally consistent with Rule 611(b) of the Federal Rules of Evidence, although in these proposed regulations cross-examination is limited to the scope of the direct examination. These rules do not allow a party to use cross-examination as a supplement to the limited and exclusive administrative discovery process provided by § 28.24. Parties may cross-examine a witness presented by a commenter to the same extent as if the witness had been presented by an opposing party.

(g) *Elements and order of presentation.* This subsection describes the usual agenda for a liability hearing under this proposed part. The order and content of such a hearing may be altered by the Presiding Officer on a case-by-case basis. The proposed rules contemplate that each party has an opportunity to make an opening statement (with the Agency making its opening statement first), that the Agency put on its prima facie case, and that the respondent thereafter has an opportunity to present its defense.

It is only by leave of the Presiding Officer that parties may present rebuttal and sur-rebuttal testimony, except that any party has the right to present rebuttal testimony after any commenter witnesses are heard. In the case of the SDWA and section 309(g) of the CWA, under paragraph (5) commenters may, after presentation of the parties' cases-in-chief, offer into evidence a witnesses' previously identified testimony. The twenty day notification requirement upon commenters set forth in this paragraph is analogous to requirements imposed upon the parties under the information exchange rule in § 28.24, and is intended to reduce unfairness and surprise. Unlike the parties, commenters are not subject to prehearing administrative discovery. See § 28.24.

(h) *Remedy issues.* The Agency recognizes that there may be actions in which underlying facts which are material to statutory penalty assessment factors, or, in the case of the Safe Drinking Water Act, which directly bear on the reasonableness of the requested remedy, are so deeply disputed that the Presiding Officer may have a compelling need to hear testimony on subject of remedy. Remedy testimony is appropriate when other means of establishing an adequate record fail.

(i) *Closing argument.* Participants may present oral closing arguments at the discretion of the Presiding Officer, and such closing arguments should address both liability and remedy issues. The participants may submit documentation supporting their argument. If the Presiding Officer does not allow oral closing argument, the Agency anticipates that he would solicit the submission of written proposed recommended findings of fact and conclusions of law as to liability and remedy under subsection (k) in order to ensure that he hears remedy arguments.

(j) *Hearing record.* Subsection (i) requires the Presiding Officer to create a verbatim record of the hearing by any permanent and reliable means, and file it with the Hearing Clerk. The filed record is part of the administrative record of the proceeding pursuant to § 28.2(b)(10).

(k) *Findings and conclusions.* Subsection (j) authorizes the Presiding Officer to solicit from the participants' proposed recommended findings of fact and conclusions of law as to liability and remedy, along with any supporting documentation regarding the remedy, prior to submitting his recommended decision to the Regional Administrator.

Subpart D—Post-Hearing

Section 28.27 Recommended Decision

(a) *Preparation and transmission.* This subsection requires that the Presiding Officer shall, following an appropriate determination of the complainant's legal claim (under § 28.21, § 28.25, or § 28.26), or following a remedy determination: (1) Certify the administrative record as complete and in compliance with the requirements of this part; (2) Make the administrative record available to the Regional Administrator; and, (3) Prepare and transmit a recommended decision to the Regional Administrator.

In concert with the definition of "recommended decision" set forth at § 28.2(r), this subsection requires that the Presiding Officer base his recommended decision on the administrative record and consider any penalty factors required by applicable law. The purpose of this subsection is to ensure that the recommended decision clearly sets forth the legal and factual bases underlying any final Agency action undertaken by the Regional Administrator. The Presiding Officer's authority to prescribe a remedy is limited to recommending the withdrawal of the administrative complaint or recommending the issuance of an order. In the case of a recommended decision concerning the appropriateness of a compliance order under section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2, the Presiding Officer is also required to provide an explanation of the reasonableness of the recommended remedy.

The purpose and effect of this subsection assures that any recommended decision by the Presiding Officer and, ultimately, final Agency action by the Regional Administrator is based on the administrative record, includes consideration of all the statutory penalty assessment factors and expresses appropriate reasons for each factual or legal conclusion. These provisions embody constitutional due process requirements, and further provide any reviewing court with a clear

path to the Agency's administrative record and the reasoning underlying its decision.

(b) *Publication.* This subsection requires the Presiding Officer to file a copy of his recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator. The Hearing Clerk is required to serve each participant with a copy of the recommended decision. § 28.9(b).

Publication of the recommended decision does not invest any participant or other person with any procedural rights not already described in this proposed part or under applicable law. In particular, the publication of the recommended decision does not authorize its recipients to make motions to the Presiding Officer for his reconsideration or withdrawal of the recommendation, does not affect the prohibition against prohibited communication set forth in § 28.12, and does not authorize administrative appeals prohibited by § 28.14(a) of this proposed part. Publication of the recommended decision does not authorize any person to provide a document of any kind to the Regional Administrator regarding his decision under § 28.28. Such communication is not to be considered by the Regional Administrator under § 28.2(b), and may result in sanctions against the person submitting the document. § 28.12(c).

Section 28.28 Decision of the Regional Administrator

This section sets out the form of and criteria for the Regional Administrator's decision resolving the action, discusses the method of public notice of such decision, and establishes the effective date of any order issued by the Regional Administrator under this part. It also provides that the Regional Administrator's decision constitutes final Agency action for the purposes of any right of judicial review. This section does not provide for a briefing opportunity for participants in the action to lobby the Regional Administrator on his decision. See preamble discussion regarding § 28.27(d). The purpose of this section is to describe the procedures the Regional Administrator shall follow in concluding actions taken under this part in a manner that provides a clear statement of the factual and legal bases for the decision and creates and preserves a record for any judicial appeal.

(a) *Contested or default order.* This subsection sets forth the alternative remedies which may be ordered by the Regional Administrator as a result of proceedings under this proposed part and provides that the Regional Administrator's decision must be based on applicable law and the administrative record, which includes the recommended decision of the Presiding Officer. See § 28.2(b)(11).

In accordance with this subsection, upon receipt of the Presiding Officer's recommended decision, the Regional Administrator may either withdraw the complaint if the Administrator concludes that the complainant has not sustained its burden of proof, or issue an order granting the requested relief, in whole or in part. Any decision by the Regional Administrator under this part must be in writing, supported by clear reasons based on the administrative record and applicable law, and include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. In the case of section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), the order shall also note the right of a commenter to petition for a penalty proceeding in accordance with § 28.26(h) of this rule. If the Regional Administrator rejects the recommendation of the Presiding Officer, the explanation for that rejection is to be reduced to writing and made part of the administrative record. See § 28.28(d).

In any order issued under this part the Regional Administrator is required to (1) make findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of applicable law, and (2) set forth conclusions of law. In the case of a penalty order, the decision must include a discussion of the applicable penalty factors which were considered in the assessment of a penalty under the particular statute and set forth the penalty assessed. In the case of a compliance order under the Safe Drinking Water Act, the decision must also include an explanation of the reasonableness of the required compliance, including the reasonableness of the time provided for compliance.

(b) *Consent Order.* This subsection sets forth the criteria for the Regional Administrator's review of a proposed consent order in a Clean Water Act or Safe Drinking Water Act action in which a commenter participates.

This subsection takes into account the limitations imposed on the Presiding Officer when the parties lodge a proposed consent order. Because the Presiding Officer does not certify the administrative record in a consent order proceeding (see § 28.27(a)(1)), the administrative record in the case of a proposed consent order is defined to include "all documents that have been filed with the Hearing Clerk by the participants before the time the proposed consent order is lodged and any written explanation of the legality of the proposed order submitted * * * by the parties * * *." § 28.22(b)(5). Since the Presiding Officer may not see a proposed consent order, he may not advise the Regional Administrator as to its legality. Consequently, upon the Regional Administrator's request, the parties themselves advise the Regional Administrator. See also §§ 28.10(c), 28.22(b)(1)(ii) and 28.28(b)(1). In order to avoid the Presiding Officer's knowledge of the proposed consent order or reasons for it, the parties' explanation becomes part of the administrative record only if the Regional Administrator approves the proposed order. See §§ 28.5(m), 28.22(b)(5) and 28.28(d). For similar reasons, the Regional Administrator's explanation to the parties of his disapproval of a proposed consent order may not become available to the Presiding Officer by becoming part of the administrative record. See §§ 28.5(h) and 28.28(d).

(c) *Publication.* This subsection provides that the Hearing Clerk shall send a copy of any signed order (whether by consent or not) by the Regional Administrator to the Presiding Officer and each participant within seven days of the decision. The Regional Administrator therefore must promptly provide his signed order to the Hearing Clerk. The Regional Administrator is to send a copy of each contested or default order to the Administrator to enable the Administrator to determine whether to suspend implementation of the order for the purpose of reviewing its conclusions of law under § 28.29.

(d) *Completion of administrative record.* This subsection provides for the completion of the administrative record after the Presiding Officer's role in an action is concluded. Certain actions taken by the Regional Administrator or Administrator occur after the Presiding Officer has transmitted a recommended decision, and this subsection provides the means by which those actions become part of the administrative record. See also § 28.2(b).

(e) *Date of issuance.* The decision is deemed issued five days following the date of mailing of the Regional Administrator's Order to the respondent. This period of time conforms to the five day rule for the presumption of mail delivery prescribed by § 28.7(b).

(f) *Effective date.* This subsection provides that any order issued under this part becomes effective thirty days after issuance unless the Administrator

suspends the implementation of the order under § 28.29, a judicial appeal is taken under the provisions of the applicable statute or, in the case of section 309(g) of the Clean Water Act, if a commenter files a timely petition for reconsideration under § 28.30. No person may stay the effective date of an administrative order by attempting to appeal it administratively. See § 28.14(a). No interested person (as defined by § 28.2(k)) may lobby the Administrator to suspend implementation of the order under § 28.29. See §§ 28.2 (b) and (p), 28.12, and 28.14.

(g) *Final Agency action.* This subsection provides that the decision of the Administrator to approve a consent agreement or issue an order constitutes final Agency action on its effective date for the purposes of any judicial appeal. Withdrawal of the complaint, however, does not constitute final Agency action under this part. Withdrawal of an administrative complaint, therefore, is without prejudice to the complainant. See also § 28.18(a).

Section 28.29 Sua Sponte Review

This section authorizes the Administrator to review rulings by Regional Administrators in actions under this proposed part on issues of law, but does not authorize the Administrator to become involved in fact-finding, or to second guess the amount of a penalty issued by the Regional Administrator, or to overturn orders issued on consent. The Agency anticipates that the review authority will be exercised infrequently, but believes that this authority is necessary to ensure a consistent Agency position on applicable law. Without a provision for *sua sponte* review, the Agency would have no opportunity to reconcile conflicting regional decisions, or to reconcile inconsistencies with the interpretation of law provided by the federal courts.

The thirty-day period for the Administrator's review matches the thirty-day delay of the effective date of a § 28.28 order. Consequently, the review period will not create any additional period of uncertainty regarding the finality of the Regional Administrator's decision.

The Administrator is to withdraw a Regional Administrator's order if the Administrator determines that the Agency lacks jurisdiction to assess a penalty or compliance remedy, or if the Administrator determines that the respondent is not liable under applicable law. The Administrator is to remand an administrative order if he determines that elements of the respondent's liability are different from those found by the Regional Administrator, and the remedy should be conformed to the amended conclusions of law, or if he finds that the order does not meet the requirements of § 28.28(a)(3), such as a failure to provide clear reasons for the decision. The Administrator shall allow the Regional Administrator's order to issue unchanged if the Administrator, upon review, finds the order legally sufficient and agrees with all material conclusions of law.

Parties are not permitted under these regulations administratively to appeal adverse rulings. See §§ 28.2 (b) and (p), 28.12 and 28.14(a).

Section 28.30 Petition to Set Aside an Order. [Section 309(g) of the Clean Water Act Only.]

(a) *Initiation.* This subsection implements section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. 1319(g)(4)(C), which gives commenters the right to petition for a hearing on the penalty within 30 days of issuance of an order if the commenter was given no opportunity (other than that provided by § 28.20(c)) to present argument or information in a proceeding conducted under § 28.21, § 28.22, § 28.25, or § 28.26 of this proposed part. For purposes of this part, a "commenter participating in [the] action" must meet the requirements of §§ 28.2(g) and 28.20(c)(2) to have standing to request a Regional Administrator to set aside a § 28.28 order.

(b) *Granting of petition.* The Regional Administrator is to grant such a petition and set aside the order as to its assessment of a penalty if he finds that the commenter is presenting material evidence not considered in the order, and that either the Presiding Officer had not afforded the commenter an opportunity for argument in the proceeding or the Regional Administrator had issued the order on default or on consent without conducting a proceeding under § 28.25 or § 28.26. If the Regional Administrator grants such a petition, he is to instruct the Presiding Officer to redetermine the penalty through an appropriate penalty proceeding.

(c) *Denial of petition.* This subsection authorizes the Regional Administrator, pursuant to the terms of Section 309(g) of the Clean Water Act, to deny a petition to set aside an order if the commenter fails to provide him with material evidence not considered in the issuance of the challenged order. As required by statute, such a denial, together with the reasons for the denial, shall be published in the **Federal Register.** Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

Section 28.31 Payment of Assessed Penalty

This section specifies the time and method of payment of assessed penalties. Contested or default penalties must be paid within thirty days of the effective date of the order assessing them, while consent penalties shall be paid according to the terms of the consent order. Respondent is to pay by certified or cashier's check, unless that requirement is waived by the Presiding Officer for good cause. In no case shall the Presiding Officer waive the condition of payment by certified or cashier's check when such a waiver may endanger the Agency's receipt of funds. The payment is to be sent to the address provided by Agency counsel, or set forth in the order. Penalties paid pursuant to section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), are to be paid to the Oil Spill Liability Trust Fund, established under section 9509 of the Internal Revenue Code of 1986, 26 U.S.C. 9509, as required by section 2002(s) of Public Law 101–380, the Oil Pollution Act of 1990.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any purposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that 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. In such circumstances, a regulatory flexibility analysis is not required.

This regulation will not impose significant costs on any small entities. The overall economic impact on small entities is expected to be slight. In addition, the rule is procedural and does not impose additional regulatory requirements on small entities. Accordingly, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Executive Order No. 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory

Impact Analysis. The notice published today is not major because the proposed rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

Paperwork Reduction Act

These proposed rules do 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 in 40 CFR Part 28

Administrative practice and procedure, Hazardous substances, Penalties, Superfund, Water pollution control.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR be amended by adding the following new part 28 as follows:

PART 28—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CLASS I CIVIL PENALTIES UNDER THE CLEAN WATER ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AND THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, AND THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES UNDER PART C OF THE SAFE DRINKING WATER ACT

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Authority: 33 U.S.C. 1319(g) and 1321(b)(6); 42 U.S.C. 9609(a); 42 U.S.C. § 11045(b)(1), (c)(1), (c)(2) and (d); and, 42 U.S.C. § 300h–2(c).

Subpart A—General Provisions

§ 28.1 Purpose and Scope.

This part sets forth procedures for the efficient and timely initiation and administration of administrative actions under sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act (CWA), 33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i); certain actions under section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h–2(c); section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9609(a); and, certain actions under section 325(b)(1), (c)(1), (c)(2), and (d) of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d). Nothing in this part authorizes any person to challenge in any action commenced under this part any final State or Agency action, including the validity or reasonableness of any applicable permit or permit condition or (in the case of the Safe Drinking Water Act), any regulation establishing an authorization by rule. Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law.

§ 28.2 Definitions.

(a) *Administrative complaint* means a document issued by the complainant that:

(1) Names one or more respondents;

(2) Alleges one or more violations of applicable law, stating with reasonable specificity the nature of the alleged violations;

(3) Proposes a penalty be assessed upon the respondent as authorized by applicable law;

(4) [Safe Drinking Water Act compliance actions only] Seeks respondent's compliance with applicable law and may propose a reasonable time for achieving compliance; and

(5) Is certified by signature of Agency counsel as a legally sufficient pleading.

(b) *Administrative record* means (except for purposes of proposed SDWA and CWA 309(g) consent orders lodged pursuant to §§ 28.22(b) and 28.28(b) of this part) the following documents that are filed with or by the Hearing Clerk:

(1) Documentation relied upon by the complainant to support the allegations as to liability which were set forth in the administrative complaint;

(2) Any record held by the Agency of any previously adjudicated violation by the respondent of any federal pollution control or environmental statute or regulation;

(3) The administrative complaint and proof of its service;

(4) [Section 309(g) of the Clean Water Act only] The record or summary of the complainant's consultation or provision of opportunity for consultation with the State in which the alleged violations occurred;

(5) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] A copy of the public notice provided by the complainant pursuant to § 28.16(d) of this part and proof of its publication;

(6) The record of the designation of the Presiding Officer;

(7) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] A memorialization of the date of lodging of any proposed consent order;

(8) Each action, including the issuance of a subpoena pursuant to § 28.11(a) of this part, memorialized in writing and signed by the Presiding Officer;

(9) Each document that is timely submitted by any participant or any member of the public pursuant to the requirements and subject to the limitations established pursuant to §§ 23.2(g), 28.4(a), 28.8, 28.9(a), 28.13(a), 28.20(a–c) and (f), 28.21(b), 28.22(a)(1),

28.25(a)(1) and (b), 28.26(d)(e)(h) (i) and (k), and 28.30(a) of this part;

(10) A verbatim record or transcription of any liability hearing held under § 28.26 of this part or of any oral argument regarding a determination of remedy presented pursuant to this part;

(11) Any recommended decision of the Presiding Officer;

(12) Any document filed by the Regional Administrator pursuant to § 28.28(d) of this part;

(13) [Section 309(g) of the Clean Water Act only] Any evidence regarding the respondent in an action under this part presented by a participating commenter to the Regional Administrator and timely filed with the Hearing Clerk as part of a request to set aside an order pursuant to § 28.30(a) of this part and section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. 1319(g)(4)(C).

(14) Any applicable Agency policy (excluding any Agency policy, or portion thereof, that applies to settlement of a penalty claim) concerning the assessment of an administrative penalty, and any information relevant to a penalty determination under such policy;

(15) Any relevant document which the Presiding Officer finds will assist in the timely and efficient resolution of the action and which is not:

(i) A prohibited communication as defined by subsection (p) of this section;

(ii) Excluded from the administrative record by the failure of a participant to meet a deadline or other requirement regarding a document referenced by paragraph (b)(9) of this subsection, excluded by operation of § 28.2(b)(15), § 28.4(c) (5) or (6) or § 28.24(e)(1) of this part, or excluded by any sanction an Agency decisionmaker imposes pursuant to this part in connection with the conduct of an action; or

(iii) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] Lodged with the Hearing Clerk pursuant to § 28.22(b)(1)(i) of this part.

(16) Any record of recusal by an Agency decisionmaker;

(17) Any record of payment of an assessed civil penalty submitted pursuant to § 28.31 of this part; and

(18) [Safe Drinking Water Act compliance action only] Any record of the respondent's compliance with the terms of the administrative order.

(c) *Administrator* means the Administrator of the United States Environmental Protection Agency or his delegate.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Agency counsel* means any Agency attorney who represents the complainant in an action under this part;

(f) *Agency decisionmaker* means the Presiding Officer, the Regional Administrator, the Administrator, or any neutral Agency employee who advises the Regional Administrator or Administrator relating to the merits of an action under this part;

(g) [*Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] Commenter* means any person (other than a party) or representative of such person who, by the deadline prescribed by § 28.20(c) of this part:

(1) Declares in writing to the Hearing Clerk that for purposes of the noticed action he is providing comments pursuant to the Clean Water Act or Safe Drinking Water Act, whichever applies, and intends to participate in the action;

(2) Submits comments on the allegations set forth in the administrative complaint or the relief proposed in the administrative complaint, or both, or specifies such allegations or proposed relief upon which he will comment; and

(3) Provides the Hearing Clerk with a return address.

(h) *Complainant* means the Agency, acting through any Agency employee authorized by the Administrator to initiate an action under this Part or authorized to conclude such an action, in whole or in part, upon consent;

(i) *Consent order* means a written order, issued by the Regional Administrator and agreed to by one or more respondents, consisting of:

(1) Uncontested findings of fact by the Agency and stipulations by the parties establishing subject matter jurisdiction;

(2) Uncontested findings of fact by the Agency establishing the respondent's violation of applicable law which has been alleged in the administrative complaint;

(3) An order consented to by the parties which assesses a civil penalty that explicitly takes into account the penalty factors applicable under law and (in the case of the Safe Drinking Water Act) a compliance remedy which is reasonably related to the respondent's violation of law;

(4) [*Section 309(g) of the Clean Water Act only*]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, a statement that any commenter to the action under this part and section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), may petition the Regional Administrator to set aside the order under § 28.30 of this part;

(5) [*Safe Drinking Water Act only*]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, a statement that any commenter to the action under this part and section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c), may file in the appropriate federal district court an appeal of a final consent order pursuant to section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6), within thirty days of the date the final consent order is issued;

(6) A statement that the respondent waives its right under applicable law to file in the appropriate federal court an appeal of the consent order;

(7) Provisions requiring payment of the agreed civil penalty pursuant to § 28.31 of this part;

(8) A statement that each signatory party shall bear its own costs and fees; and

(9) All terms of the agreement as authorized by applicable law.

(j) *Document* means any record or collection of information maintained in a discrete physical form;

(k) *Interested person* means any:

(1) Agency employee or contractor who may or does investigate, litigate, or present information or evidence, arguments, or the position of the Agency in the action before the Presiding Officer, or who advises such an Agency employee regarding the action;

(2) Agency employee who actively participated at any time, directly or as a supervisor, in any preparation, investigation or deliberations resulting in the issuance of the administrative complaint;

(3) Person who the complainant may arrange to have appear as a witness on its behalf in the action; and

(4) Non-Agency participant, witness or agent of a non-Agency participant, or defaulted respondent.

(l) *Participant* means any party or (in the case of the Safe Drinking Water Act or section 309(g) of the Clean Water Act) any commenter.

(m) *Party* means the complainant, or any respondent who has complied with the requirements of § 28.20(a) or (b) of this part and who has not been sanctioned by the Presiding Officer with a finding of default.

(n) *Presiding Officer* means an Agency attorney who is to preside over an action conducted pursuant to this part, and who is to make a recommended decision thereon.

(o) *Proceeding* means any hearing, determination or other activity involving the parties conducted by the Presiding Officer pursuant to the requirements of this part;

(p) *Prohibited communication* means any communication, documentary or oral, between an interested person and an Agency decisionmaker (except between certain interested persons and the Regional Administrator pursuant to § 28.22[b][1] of this part), regarding:

(1) The merits of an action under this part, without each other party to the action having had an opportunity simultaneously to participate in or respond to such communication;

(2) The substance of any settlement negotiation between parties or the substance of any proposed consent order lodged with the Hearing Clerk; or

(3) The substance of a recommended decision set forth by the Presiding Officer pursuant to §§ 28.2(r) and 28.27(a)(3) of this part.

(q) [*Safe Drinking Water Act and Section 309(g) of the Clean Water Act only*]. Public notice means a document consisting of:

(1) The name and address of the EPA office initiating the referenced action;

(2) The name and address of the respondent, and the activity and facility or site which the administrative complaint addresses;

(3) A brief description of the business or activity conducted by the respondent;

(4) Any permit number and permit issuance date referenced by the administrative complaint, or (in the case of the Safe Drinking Water Act) any regulation establishing an authorization by rule referenced by the administrative complaint;

(5) A brief description of the allegations of violations in the administrative complaint and the relief proposed by the complainant;

(6) The name, address and telephone number of the Hearing Clerk from whom interested persons may obtain further information;

(7) A brief statement of the opportunity for any member of the public to submit written comments on the administrative complaint to the Hearing Clerk, and the deadline for the submission of such comments;

(8) A brief description of the procedure by which a member of the public may become a participant in an action pursuant to §§ 28.2(g) and 28.20(c) of this part;

(9) A brief statement of the authority of the Regional Administrator to issue an order upon default if respondent fails to file a response within the time period specified in § 28.20 of this part;

(10) [Safe Drinking Water Act only.] A brief, general description of the name or general description of the receiving formation and the location of the well field, or each existing, new or proposed injection well, whichever applies; and

(11) A brief statement describing the location and availability (pursuant to § 28.17 of this part) of documents filed with the Hearing Clerk in the action.

(r) *Recommended decision* means a document written by the Presiding Officer, in the form of a decision by the Regional Administrator pursuant to the requirements of § 28.28(a)(3) of this part, which recommends that the Regional Administrator either:

(1) Withdraw the administrative complaint on the basis that the administrative complaint does not state a cause of action or that the allegations of fact and conclusions of law in the administrative complaint are not supported by the administrative record; or

(2) Issue an order on the basis that the administrative record and applicable law support such an order.

(s) *Regional Administrator* means the Administrator of any Regional Office of the Agency or his delegate. In a case where an authorized Agency Headquarters employee initiates an action under this part, the term "Regional Administrator" as used in these rules shall mean the Administrator.

(t) *Respondent* means any person named in the caption of an administrative complaint, or representative of such person, who the complainant alleges is liable for the redress of any violation alleged in the complaint.

(u) *Response* means a document, responsive to the administrative complaint and signed by the respondent, that consists of the name, address and telephone number of the respondent and, if the respondent is represented by counsel, also includes the name, address and telephone number of the respondent's counsel and that:

(1) Admits liability; or

(2) Denies liability in whole or in part and specifies each allegation of fact or conclusion of law as to liability which is in dispute and the specific factual or legal grounds for the respondent's defense; and

(3) Opposes or agrees to pay the proposed penalty in the administrative complaint and (in the case of the Safe Drinking Water Act) opposes or agrees to comply with the relief requested in the administrative complaint regarding the regulation, schedule, or other requirement of the applicable underground injection control program that is alleged in the administrative complaint to have been violated, or both.

§ 28.3 Number and gender.

For purposes of this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as appropriate.

§ 28.4 Presiding Officer.

(a) *Authority.* (1) The Presiding Officer may by a signed filing with the Hearing Clerk:

(i) Issue a subpoena pursuant to § 28.11 of this part;

(ii) Allow the withdrawal or amendment of an administrative complaint pursuant to § 28.18 (a)(2) or (b)(2) of this part;

(iii) Determine liability, direct entry of default as to liability, and conduct a default remedy determination proceeding pursuant to § 28.21 of this part;

(iv) Allow amendment of a response pursuant to § 28.20(f)(2) of this part;

(v) Set alternate limitations on written legal arguments or statements pursuant to § 28.8 of this part;

(vi) Issue or modify a prehearing order pursuant to § 28.23(d) of this part;

(vii) Schedule and further limit information exchange pursuant to § 28.23(b)(2) of this part, and (in a Clean Water Act or Safe Drinking Water Act action) delay information exchange pursuant to § 28.24(c)(2) of this part;

(viii) Reschedule proceedings pursuant to § 28.22 of this part;

(ix) Make a summary determination pursuant to § 28.25 of this part;

(x) Notify participants of the occurrence of a prohibited communication pursuant to § 28.12(b) of this part;

(xi) Impose sanctions (other than by fine or imprisonment) pursuant to § § 28.12(c) and 28.24(e)(2) of this part or to aid in the maintenance of order and the efficient and impartial administration of justice;

(xii) Certify the administrative record and set forth and transmit a recommended decision pursuant to § 28.27(a) of this part; and

(xiii) Waive payment conditions pursuant to § 28.31(b) of this part; and

(2) The Presiding Officer may:

(i) Except as more specifically provided by paragraph (a)(1) of this section, schedule and take certain administrative actions in conducting any proceeding pursuant to § 28.25 or § 28.26 of this part; and

(ii) Except as more specifically authorized or limited by paragraphs (a) and (c) of this section and the requirements of this part, take any other action specifically authorized by this part or necessary to conduct an action

under this part which will aid in the efficient and impartial administration of justice.

(b) *Duties.* The Presiding Officer shall in a timely fashion:

(1) Carry out his duties as required by this part;

(2) Oversee and direct the activities of the Hearing Clerk in an action under this part;

(3) Schedule activities of the participants pursuant to the requirements of this part;

(4) Memorialize in a signed writing filed with the Hearing Clerk:

(i) Any action he takes pursuant to his authority provided by paragraph (a)(1) of this section;

(ii) Any deadline he establishes pursuant to his authority provided by subsection (a) of this section; and

(iii) Any significant action he takes pursuant to his authority provided by paragraph (a)(2) of this section; and

(5) Except as limited by paragraph (c) of this section and the requirements of this part, take any other action necessary for the maintenance of order and for the efficient and impartial adjudication of allegations arising in an action under this part.

(c) *Limitations.* The Presiding Officer shall not:

(1) Have any prior connection with the action before him including the performance or supervision of investigative or prosecutorial functions;

(2) Have any interest in the outcome of the action before him;

(3) Initiate or knowingly engage in any prohibited communication with any interested person or fail to disclose any attempt by any interested person to initiate or engage in any prohibited communication;

(4) Grant an extension, delay, continuance or stay to a participant based on a participant's request for information pursuant to law outside the scope of this part;

(5) Allow the introduction of any document or testimony into the administrative record relating to settlement of the instant action or of any other action;

(6) Hear or consider any challenge to a final State or Agency action, including the issuance of any applicable permit or (in the case of the Safe Drinking Water Act) the promulgation of any applicable authorization by rule; or

(7) Dismiss the administrative complaint.

§ 28.5 Hearing Clerk.

The Regional Administrator shall designate a Hearing Clerk. The Hearing Clerk, in addition to carrying out his duties as specified elsewhere by this part, shall:

(a) Immediately notify in writing the complainant and each respondent of the name of the Presiding Officer designated under § 28.16(h) of this part, and (in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act) the Hearing Clerk shall notify in writing each commenter upon the close of the comment period provided pursuant to § 28.20(c) of the name of the Presiding Officer designated under § 28.16(h) of this part. The Hearing Clerk shall immediately notify in writing each participant of the name of any Presiding Officer designated under § 28.13(b) of this part;

(b) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) create and maintain a list of all commenters identified under §§ 28.2(g) and 28.20(c) of this part;

(c) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) In any action in which a commenter participates pursuant to § 28.20(c)(2) of this part, immediately after the deadline prescribed by § 28.20(c) of this part notify the Presiding Officer and each participant of the name and address of each participant in the action, and of the name and address of Agency counsel and counsel for the respondent, if any;

(d) Record the date of receipt of each document received regarding the action or (in the case of a Safe Drinking Water Act compliance order) regarding the respondent's compliance with the terms of the order;

(e) Immediately notify the Presiding Officer of the receipt of any document filed with the Clerk by any participant;

(f) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) Maintain securely and make available to each non-signatory participant each document lodged pursuant to the requirements of § 28.22(b) of this part;

(g) Bill any costs accrued under § 28.17(c) of this part;

(h) *[Safe Drinking Water Act and section 309(g) of the Clean Water Act only].* Remove from the file and return to the signatory parties any proposed consent order and supporting explanation upon the disapproval of such proposed order by the Regional Administrator pursuant to § 28.28(b) of this part;

(i) Perform such other ministerial and clerical matters as required by the Presiding Officer to assist him in carrying out his responsibilities under this part; and

(j) Perform such ministerial and clerical matters as required by the Regional Administrator or Administrator to assist him in carrying out his responsibilities under this part.

§ 28.6 Representation by counsel.

A respondent or commenter may be represented by counsel at any stage of an action conducted under this part. The complainant shall be represented by Agency counsel in all proceedings under this part.

§ 28.7 Computation of time.

(a) *Computation of days.* In computing any period of time in an action under this part, the day of the event from which the designated period runs shall not be included. Saturdays, Sundays and federal holidays shall be included, except that when a deadline falls on a Saturday, Sunday, or federal holiday, the deadline shall be extended to the next business day.

(b) *Time of notice.* Except as specifically provided elsewhere in this part, for purposes of this part, notice shall be deemed given at the time of personal service, or five days after the date of mailing or other means of substituted service, except that if notice is provided by certified mail, return receipt requested, (or its equivalent pursuant to § 28.9 of this part) notice occurs on the date that the return receipt (or its equivalent) is signed.

(c) *Time of compliance.* Except as provided otherwise by the Presiding Officer or § 28.24(c)(1) of this part, a participant shall be deemed to have complied with a deadline under this part if the participant either responds personally or posts the response by first class mail (or any other messengered service that is no less speedy and reliable) by the applicable deadline.

§ 28.8 Limitations on written legal arguments or statements.

Any written legal argument or statement submitted to the Presiding Officer by a participant in an action under this part shall be double spaced and typed in pica (twelve point) or larger type. Except as otherwise provided by this part, further limited by the Presiding Officer, or otherwise authorized by the Presiding Officer for good cause shown, no written legal argument or statement, exclusive of any supporting documentation, may exceed:

(a) Twelve pages, if an initial argument;

(b) Six pages, if a responsive argument; and

(c) Three pages, if an argument in reply specifically authorized by the Presiding Officer; or

(d) Ten pages, if a statement specifically authorized by the Presiding Officer.

§ 28.9 Service of documents.

(a) *By participants.* Except as otherwise provided by this part, each participant in an action simultaneously shall serve with an attached certificate of service upon each other participant and the Presiding Officer, personally or by first class or certified mail (or any other manner of messengered service that is no less reliable or speedy), a copy of each pleading and shall file the original pleading and the attached certificate of service with the Hearing Clerk.

(b) *By the Hearing Clerk.* Except as otherwise provided by this part, the Hearing Clerk promptly shall serve with an attached certificate of service upon each participant, personally or by first class or certified mail (or any other manner of messengered service that is no less reliable or speedy), any notice, ruling, order, or other document issued by the Presiding Officer, Regional Administrator, or Administrator.

(c) *Upon counsel.* Except for service of the administrative complaint or as otherwise ordered by the Presiding Officer, any service made upon a participant who is represented by an attorney shall be made by serving the participant's attorney.

§ 28.10 Parties' burdens of going forward, proof and persuasion.

(a) *Complainant's burden of going forward.* The complainant has the burden pursuant to § 28.16(a) of this part of presenting a cause of action and request for relief in the administrative complaint.

(b) *Respondent's burden of going forward.* The respondent has the burden of timely presenting:

(1) In its responsive pleading made pursuant to §§ 28.2(u) and 28.20 of this part any exculpatory statement as to liability and any statement opposing the complainant's request for relief proposed in the administrative complaint; and

(2) All information requested by the complainant pursuant to § 28.24(b)(2) of this part and known to the respondent.

(c) *Parties' joint burden of going forward.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only.] Each signatory to a lodged proposed consent order shares the burden, upon the request of the Regional Administrator pursuant to § 28.22(b)(1)(ii) of this part, of presenting to the Regional Administrator information supporting the legal bases of the proposed order.

(d) *Complainant's burden of proof.* Except where the respondent has failed to carry a burden of going forward as to a given matter under paragraph (b)(1) of this section, in any hearing under § 28.26 of this part the complainant has the burden of proving each allegation of fact in the administrative complaint by a preponderance of the evidence.

(e) *Parties' burden of persuasion.* Except where the respondent has failed to carry a burden of going forward as to a given matter under paragraph (b)(2) of this section, in any proceeding under this part the proponent of an argument to the Presiding Officer has the burden of persuasion.

§ 28.11 Subpoenas.

(a) *Issuance.* The Presiding Officer may, on his own initiative or at the request of a party, subpoena the testimony of witnesses or the production of documents, or both, for a hearing as to liability conducted pursuant to § 28.26 of this part, in order to determine the truthfulness of any allegation as to liability included in the administrative complaint or statement as to liability made in the response.

(b) *Service.* The Presiding Officer shall serve the subpoena upon its recipient in the manner prescribed for the service of an administrative complaint pursuant to § 28.16(c) of this part.

(c) *Filing with Hearing Clerk.* The Presiding Officer shall file a copy of the subpoena with the Hearing Clerk, who shall serve it on the parties in the manner required by § 28.9(b) of this part.

§ 28.12 Prohibited communication.

(a) *Prohibition.* No interested person or Agency decisionmaker shall initiate or engage in any prohibited communication.

(b) *Notification and opportunity for investigation.* If during proceedings under this part the Presiding Officer receives or becomes aware of a prohibited communication by any interested person, he shall immediately notify each participant of the circumstances and substance of the communication. If a participant in the action initiated or engaged in any prohibited communication as defined by § 28.2(p)(2) of this part or a prohibited communication as defined by § 28.2(p)(1) of this part which was significant or prejudicial, or caused it to be made, the Presiding Officer shall upon the request of any participant require the participant who so communicated or caused the communication to be made, to the extent consistent with justice and applicable law, to show cause why that participant's claim or interest in the action should not be denied, disregarded, or otherwise adversely affected on account of such communication.

(c) *Sanctions or recusal.* (1) Except as otherwise provided in paragraph (c)(2) of this section, the Presiding Officer may, at any time before transmission of a recommended decision under § 28.27(a)(3) of this part, impose a sanction on any participant who has initiated or engaged in a prohibited communication in violation of paragraph (a) of this section, or caused such communication to be made.

(2) The Regional Administrator may, at any time following transmission of a recommended decision under § 28.27(a) of this part, impose a sanction (other than by fine or imprisonment) on any participant who, after such transmission, has initiated or engaged in a prohibited communication in violation of paragraph (a) of this section, or caused such communication to be made. [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] During any suspension of proceedings pursuant to § 28.22(b)(2) of this part, the Regional Administrator may impose a sanction (other than by fine or imprisonment) on any participant who has initiated or engaged in a prohibited communication, or caused such communication to be made.

(3) Any Agency decisionmaker who has initiated or knowingly engaged in prohibited communication shall recuse himself from further participation in the action except as a witness.

§ 28.13 Request for an alternate Presiding Officer.

(a) *Request.* A party may, by filing with the Hearing Clerk a legal argument with supporting affidavits, request the Regional Administrator to designate an alternate Presiding Officer on the basis that the Presiding Officer has not met a limitation imposed by § 28.4(c) of this part or has substantially failed to comply with his duties under § 28.4(b) of this part.

(b) *Decision.* The Regional Administrator's decision on a request for an alternate Presiding Officer shall be in writing and shall be supported by findings. The Regional Administrator shall grant the request and designate an alternate Presiding Officer if he determines that the challenged Presiding Officer has not met a limitation imposed by § 28.4(c) of this part or has substantially failed to comply with the requirements of § 28.4(b) of this part. The Regional Administrator shall deny the request if he determines, as

applicable, that the challenged Presiding Officer has at all times met the limitations imposed by § 28.4(c) of this part or has substantially complied with the requirements of § 28.4(b) of this part.

(c) *Sanctions.* The Regional Administrator may sanction the requesting party (other than by fine or imprisonment) if he denies a request made pursuant to paragraph (a) of this section and determines that the requesting party acted for purpose of delay or otherwise did not make the request in good faith.

§ 28.14 Unavailability of administrative appeal; limitation on requests for reconsideration.

(a) *Unavailability of administrative appeal.* No person may administratively appeal any ruling, decision, or other action of the Presiding Officer or Regional Administrator, whether interlocutory or final, made or taken in connection with an action under this part. No person may administratively appeal the issuance of a subpoena issued pursuant to § 28.11 of this part.

(b) *Limitation on requests for reconsideration.* No person may request the Presiding Officer to reconsider the terms of a recommended decision transmitted to the Regional Administrator pursuant to § 28.27(a) of this part. Except as otherwise provided by § 28.30 of this part, no person may request reconsideration of any ruling, decision, or other action of a Regional Administrator or the Administrator, whether interlocutory or final, made or taken under this part.

§ 28.15 Prospective effect of this part.

This part operates prospectively and shall govern any action that is initiated by the issuance of an administrative complaint on or after the effective date of this part.

Subpart B—Prehearing

§ 28.16 Initiation of action.

(a) *Issuance of administrative complaint.* If the complainant has information that:

(1) [Section 309(g) of the Clean Water Act only] Any person has violated section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act [33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328 or 1345], or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Clean Water Act, 33 U.S.C. 1342, by the Regional Administrator or by a State, or in a permit issued under section 404 of the Clean Water Act, 33 U.S.C. 1344, by a State, the complainant may issue an administrative complaint.

(2) [Section 311(b)(6) of the Clean Water Act only] Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility:

(i) Has discharged oil or a hazardous substance in violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3), or

(ii) Fails or refuses to comply with any regulation issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), to which that owner, operator, or person in charge is subject, the complainant may issue an administrative complaint.

(3) [Safe Drinking Water Act only] Any person is violating the requirement of an applicable underground injection control program, the complainant may issue an administrative complaint which alleges such violation and either proposes a penalty or proposes a penalty and compliance, as authorized by section 1423(c) of the SDWA, 42 U.S.C. 300h–2(c). An administrative complaint proposing compliance shall propose that the respondent comply with the regulation, schedule, or other requirement of the applicable underground injection control program that is alleged to have been violated. If the complainant has information that a person has violated the requirement of an applicable underground injection control program, but such violation has ceased and its cause has been remedied, the complainant may issue an administrative complaint which proposes a penalty for that person's violation but does not propose compliance.

(4) [CERCLA only] A person has failed or refused to comply with the requirements of an administrative order or agreement entered pursuant to section 120 of CERCLA (42 U.S.C. 9620), a consent decree or agreement entered pursuant to section 122 of CERCLA (42 U.S.C. 9622), or has violated the requirements of section 103 (a) or (b) of CERCLA, 42 U.S.C. 9603 (a) or (b) (relating to notice to National Response Center); section 103(d)(2) of CERCLA, 42 U.S.C. 9603(d)(2) (relating to the destruction of records and related subjects); section 108 of CERCLA, 42 U.S.C. 9608 (relating to financial responsibility and related subjects); or an order issued under section 122(d)(3) of CERCLA, 42 U.S.C. 9622(d)(3)(relating to settlement agreements for action under section 104[b] of CERCLA, 42 U.S.C. 9604[b]), the complainant may issue an administrative complaint.

(5) [Section 325(b)(1) of EPCRA only] Any person has violated the requirements of section 304 of EPCRA, 42 U.S.C. 11004, the complainant may issue an administrative complaint.

(6) [Section 325(c)(1) of EPCRA only] Any person has failed to provide access or failed to prepare, have, make available or submit information as required by section 312 of EPCRA, 42 U.S.C. 11022, the complainant may issue an administrative complaint.

(7) [Section 325(c)(2) of EPCRA only, except as it may apply to reporting requirements under section 313 of EPCRA] Any person has violated any requirement of section 311 or 323(b) of EPCRA, 42 U.S.C. 11021 or 11043(b), or has failed to furnish information to the Administrator as required by section 322(a)(2) of EPCRA, 42 U.S.C. 11042(a)(2), the complainant may issue an administrative complaint.

(8) [Section 325(d)(1) of EPCRA only, except as it may apply to trade secrecy claims under section 313 of EPCRA] Any person has submitted a trade secret claim in violation of the requirements of section 325(d)(1) of EPCRA, 42 U.S.C. 11045(d)(1), the complainant may issue an administrative complaint.

(b) *Notice of respondent's opportunity for hearing.* At the time of the issuance of the administrative complaint, the complainant shall notify the respondent in writing of:

(1) The respondent's opportunity to respond to the administrative complaint pursuant to § 28.20 of this part;

(2) The consequences of the respondent's failure to respond to the administrative complaint by the applicable deadline; and

(3) The applicability of this part to the administrative action initiated against him.

(c) *Service of administrative complaint.* Any authorized Agency employee shall serve the administrative complaint upon the respondent personally or by sending it to the respondent by certified mail, return receipt requested. If the respondent is a corporation, the complainant shall serve the President of the corporation or the corporation's registered agent for service of process. If the respondent is an unincorporated business, a partnership, or any other form of unincorporated association, the complainant shall serve any person authorized by applicable law to receive service of process. If the respondent is a federal agency, State or State agency, or a local unit of government, the complainant shall serve its chief executive officer, or its authorized agent for service of process. Service on the respondent is complete upon acceptance of personal service or when the return receipt is signed by any employee or agent of the respondent who in the ordinary course of business is

authorized to sign for certified mail on behalf of the respondent. If personal service is ineffective and if certified mail is refused or unclaimed, the complainant shall serve the respondent by another appropriate means. In such case, service is complete upon the execution of substituted service.

(d) *Notice of administrative complaint.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] No later than the time of proof of service of the administrative complaint, the complainant shall provide a copy of the public notice of an action under this part to the public by providing notice by first class mail to any person who requests such notice and by providing notice to potentially affected persons in a manner reasonably calculated to provide such notice.

(e) *Opening of the administrative record.* Upon issuance of the administrative complaint, the complainant or Agency counsel shall open the administrative record by filing with the Hearing Clerk appropriate documents, which shall include the administrative complaint and attached certificate of service, and which may include any evidence of violations, any information relevant to the assessment of a civil penalty or the imposition of a SDWA compliance remedy by the Regional Administrator, and any anticipatory motions (including motions for summary determination, accelerated decision, and remedy upon default) with any supporting legal arguments and affidavits.

(f) *Anticipatory motions by complainant.* Notwithstanding any other provision of this part, at any time before the respondent's deadline for the response pursuant to § 28.20 (a) or (b) of this part, whichever applies, the complainant may anticipatorily move for a default remedy pursuant to § 28.21(b) of this part, or for summary determination as to liability or an accelerated recommended decision pursuant to § 28.25 of this part.

(g) *Notification of Agency decisionmaker.* Upon issuance of the administrative complaint and upon receipt of proof of service, the Hearing Clerk immediately shall so notify the appropriate Agency decisionmaker.

(h) *Designation of Presiding Officer.* The Regional Administrator shall designate a Presiding Officer for the referenced Agency action no later than twenty days after the date of service of the administrative complaint.

§ 28.17 Availability of documents filed with Hearing Clerk.

The Hearing Clerk shall maintain securely and shall make available at reasonable times for inspection and copying by any person documents filed with the Hearing Clerk pursuant to this part, subject to any:

(a) Provision of law restricting the public disclosure of confidential business information;

(b) Restriction necessary to insure the physical security of the filed documents; and

(c) Agency rule governing the costs of copying Agency records.

§ 28.18 Withdrawal or amendment of administrative complaint.

(a) *Withdrawal of administrative complaint.* The complainant may withdraw the administrative complaint without prejudice:

(1) Unilaterally and as of right at any time before the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner; or

(2) By stipulation with the respondent or by permission of the Presiding Officer at any time after the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner.

(b) *Amendment of administrative complaint.* The complainant may amend the administrative complaint:

(1) Unilaterally and as of right at any time before the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner; or

(2) By stipulation with the respondent or by permission of the Presiding Officer at any time after the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner.

§ 28.19 Consultation with State. [Section 309(g) of the Clean Water Act only]

The complainant shall, within thirty days of the respondent's receipt of the administrative complaint, provide the State agency with the most direct authority over the matters which are the subject of the action under this part an opportunity for consultation on the referenced Agency action.

§ 28.20 Responses to administrative complaint.

(a) *Respondent's deadline.* The respondent shall file with the Hearing Clerk a response within thirty days after receipt of:

(1) The administrative complaint; or,

(2) [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] If applicable, the Regional Administrator's disapproval of a proposed lodged consent order pursuant to § 28.28(b)(2) of this part.

(b) *Extension of respondent's deadline.* For the purpose of engaging in informal settlement negotiations between the complainant and respondent the deadline for the respondent to file a response pursuant to paragraph (a)(1) of this section shall be extended:

(1) For any period stipulated by the complainant and respondent (but in no event for longer than ninety days following such deadline), by filing such stipulation with the Hearing Clerk within thirty days after respondent's receipt of the administrative complaint; or

(2) For thirty days following such deadline in the case of an offer of a penalty settlement by the respondent, by filing notice of the existence of such an offer with the Hearing Clerk within thirty days after the respondent's receipt of the administrative complaint.

(c) *Deadline for public comment and participation.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] Any member of the public may, within thirty days after receipt of the notice provided pursuant to § 28.16(d) of this part:

(1) Submit written comments on the administrative complaint to the Hearing Clerk identified in the notice; or

(2) Become a participant in the action by meeting the requirements of § 28.2(g) of this part.

(d) *Admission.* Each uncontested allegation in the administrative complaint as to liability is deemed admitted by the respondent, whether by the respondent's failure to make a timely response pursuant to paragraph (a) or (b) of this section, whichever applies, or by the respondent's failure in a timely response to deny such allegation included in the administrative complaint.

(e) *Waiver.* If the respondent fails to make a timely response pursuant to paragraph (a) or (b) of this section, whichever applies, the respondent shall have waived its opportunity to appear in the action for any purpose.

(f) *Amendment of response.* A respondent who has timely responded pursuant to paragraph (a) or (b) of this section, whichever applies, may:

(1) As of right amend its response within thirty days following the complainant's amendment of the administrative complaint pursuant to § 28.18 of this part; or

(2) Amend its response no later than thirty days prior to the date set for the

first proceeding on the merits under this part upon stipulation with the complainant or by permission of the Presiding Officer upon a finding of good cause shown and upon a finding that such amendment would not prejudice the complainant.

§ 28.21 Default proceedings.

(a) *Determination of liability.* If the respondent fails timely to respond pursuant to § 28.20 (a) or (b) of this part or the Presiding Officer determines the respondent's conduct warrants imposition of the sanction of default as to liability, the Presiding Officer, on his own initiative, shall immediately determine whether the complainant has stated a cause of action.

(1) If the Presiding Officer determines that the complainant has stated a cause of action, the Presiding Officer shall direct the Hearing Clerk to enter the respondent's default as to liability in the administrative record. Upon entry, the allegations as to liability included in the administrative complaint shall be deemed recommended findings of fact and conclusions of law.

(2) If the Presiding Officer determines that the complainant has not stated a cause of action, the Presiding Officer shall:

(i) Allow the complainant to amend the administrative complaint pursuant to § 28.18(b)(2) of this part; or

(ii) Set forth that determination in a recommended decision to the Regional Administrator pursuant to § 28.27(a)(3) of this part and shall recommend that the Regional Administrator withdraw the administrative complaint.

(b) *Determination of remedy.* In any action under this part in which the Hearing Clerk has entered a default as to liability, the complainant shall submit within thirty days of receipt of the entry of default a written argument (with any supporting documentation) regarding the assessment of an appropriate civil penalty and (in the case of the Safe Drinking Water Act) regarding the requirement for compliance, subject to the following limitations:

(1) [CERCLA, section 309(g) of the Clean Water Act and Section 325(b) of EPCRA only]. The argument shall be limited to the nature, circumstances, extent and gravity of the violation or violations and, with respect to the respondent, ability to pay, any prior history of such violations, the degree of culpability, the economic benefit or savings (if any) respondent enjoyed resulting from the violation, and such other matters as justice may require.

(2) [Section 311(b)(6) of the Clean Water Act only]. The argument shall be limited to the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(3) [Safe Drinking Water Act only]. The argument as to penalty shall be limited to the seriousness of the respondent's violation or violations, the economic benefit (if any) respondent enjoyed resulting from the violation, and any history of such violations, any good faith efforts by the respondent to comply with the applicable requirements, the economic impact of the penalty on the respondent, and such other matters as justice may require. The argument as to compliance shall be limited to the reasonableness of the time required for compliance, if any, and the necessity for any interim requirements, such as reporting requirements, that may be included in any compliance order.

§ 28.22 Consent orders.

(a) *Agreement of parties.* (1) Except as specifically provided by paragraph (b) of this section, at any time before final Agency action, the complainant and a respondent may conclude an action, in whole or in part, by agreeing upon a civil penalty and (in the case of the Safe Drinking Water Act) a compliance remedy which is reasonably related to the respondent's violation of law. The parties shall memorialize such an agreement in the form of an Agency consent order and serve it pursuant to § 28.9(a) of this part. Upon service, a consent order signed by the complainant and a respondent has the force and effect of a unilateral order which has been signed by the Regional Administrator under § 28.28 of this part, except that a signatory respondent may not appeal such a consent order to the appropriate federal court.

(2) If the filing of the consent order with the Hearing Clerk pursuant to paragraph (a)(1) of this section does not wholly conclude the action:

(i) The parties shall inform the Presiding Officer of the issues that remain unresolved; and

(ii) The Presiding Officer shall promptly inform the parties or the remaining parties of the schedule of the remaining proceedings.

(b) *Submission of proposed consent order.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only]. In any action in which a commenter is participating or may participate pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, and in which the parties have reached an agreement on the terms of a consent order pursuant to paragraph (a) of this section:

(1) The parties shall:

(i) Sign a proposed consent order and lodge it with the Hearing Clerk no sooner than the deadline established for public comment and participation pursuant to § 28.20(c) of this part; and

(ii) Upon the request of the Regional Administrator, lodge a written explanation of the legality of the proposed consent order with the Hearing Clerk.

(2) If the parties have complied with the requirements of paragraph (b)(1)(i) of this section, the action shall be suspended until the Regional Administrator approves or disapproves the proposed consent order pursuant to § 28.28(b) of this part.

(3) The complainant shall serve each non-signatory participant in the action with a copy of the proposed consent order at the time the parties lodge the proposed order pursuant to paragraph (b)(1)(i) of this section and notify each non-signatory participant of the suspension of the action occurring pursuant to paragraph (b)(2) of this section and of the provisions of §§ 28.2(p), 28.4(c) and 28.12 of this part which prohibit communication with the Presiding Officer or the Regional Administrator regarding the substance of the proposed order.

(4) Upon receipt of a proposed consent order lodged pursuant to paragraph (b)(1)(i) of this section, the Hearing Clerk shall notify the Presiding Officer of its receipt, transmit the proposed order to the Regional Administrator, and make all documents filed with the Hearing Clerk by the participants available to the Regional Administrator. Upon receipt of a written explanation lodged pursuant to paragraph (b)(1)(ii) of this section, the Hearing Clerk shall transmit the explanation to the Regional Administrator.

(5) Upon approval by the Regional Administrator of a proposed consent order pursuant to § 28.28(b) of this part, all documents that have been filed with the Hearing Clerk by the participants before the time the proposed consent order is lodged and any written explanation of the legality of the proposed order submitted to the Regional Administrator by the parties pursuant to paragraph (b)(1)(ii) of this section are deemed to constitute the administrative record underlying the approved consent order.

(6) Upon disapproval by the Regional Administrator of a proposed consent order pursuant to § 28.28(b) of this part, the Presiding Officer shall promptly reschedule any previously suspended proceedings, and the action shall resume according to the provisions of this part.

§ 28.23 Prehearing conference.

(a) *Time and form of conference.* In any action in which the respondent timely responds pursuant to § 28.20 (a) or (b) of this part, the Presiding Officer shall hold a prehearing conference among all the parties to the action not later than thirty days after such response. The Presiding Officer may conduct the conference in person or by telephone.

(b) *Purposes of conference.* At the prehearing conference the Presiding Officer:

(1) Shall establish a time and place for further proceedings in the action pursuant to the requirements of paragraph (c) of this section;

(2) Shall, upon request of any party, schedule an exchange of information as appropriate, and subject to the limitations of § 28.24 of this part, where appropriate, on his own impose additional limitations on the scope of an exchange of information between the parties;

(3) May attempt to simplify issues and help the parties to stipulate to facts not in dispute;

(4) May explore the necessity or desirability of amendments to the pleadings; and

(5) May discuss any other appropriate subject.

(c) *Time and place of further proceedings.* (1) The Presiding Officer shall schedule a proceeding on the merits of the action and, as may be required, any other proceeding. Except as otherwise provided by paragraph (c)(2) of this section, each proceeding shall be conducted at an appropriate Agency office. The Presiding Officer shall schedule the proceeding on the merits to take place no sooner than thirty days following the date of the prehearing conference conducted pursuant to this section, or no sooner than seven days following the completion of any information exchange scheduled pursuant to § 28.24(c) of this part (exclusive of any supplemental exchange pursuant to § 28.24(c)(1)), whichever is later.

(2) Any party, on the basis of necessity, may request in writing within ten days of receipt of the notice of such proceeding that the Presiding Officer schedule such a proceeding at a time or location other than that initially specified by the Presiding Officer. The Presiding Officer shall promptly grant or deny such a request.

(d) *Prehearing order.* The Presiding Officer shall issue to the participants a prehearing order no later than twenty days following the conference which shall memorialize the rulings of the Presiding Officer made at the prehearing conference. The Presiding Officer may, to aid the efficient administration of justice, modify the prehearing order as necessary, except as limited by § 28.24(c) of this part.

§ 28.24 Information exchange.

(a) *Authority.* Except by stipulation of the parties which is filed with the Hearing Clerk, by the issuance of a subpoena pursuant to § 28.11 of this part, and by authorization of law outside the scope of this part, this section provides exclusive authority for the provision of information by parties and provides such authority only in an action in which the respondent has timely responded to an administrative complaint pursuant to § 28.20 (a) or (b) of this part.

(b) *Scope of exchange.* Subject to paragraph (a) of this section, and subject to any further limitation imposed by the Presiding Officer in a prehearing order issued pursuant to § 28.23(b)(2) of this part:

(1) Each party, upon request by an opposing party, shall provide, in writing, to the requestor only:

(i) The name of each witness it intends to present at any proceeding under § 28.26 of this part, as well as a brief description of the witness' connection to the action, the witness' qualifications (in the case of an expert witness), and the subject matter of the intended testimony; and

(ii) Each document (other than a document to be used solely for purposes of impeachment) it intends to introduce at any proceeding under § 28.25 or § 28.26 of this part and which has not been filed with the Hearing Clerk pursuant to § 28.16(e) of this part; and

(2) Respondent, upon request by complainant, shall provide to the complainant in writing all information requested by the complainant and known to the respondent relating to:

(i) The respondent's inability to pay a civil penalty; and

(ii) The respondent's net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the administrative complaint to be a violation of applicable law.

(c) *Timing of exchange.* (1) The parties shall conduct the exchange of information according to the schedule established by the Presiding Officer pursuant to § 28.23 (b) and (d) of this part, but except as provided for by paragraph (c)(2) of this section and a continuing right to supplement described below, under no circumstance shall such exchange conclude later than sixty days after the date of the prehearing conference. The parties may supplement information requested pursuant to paragraph (b)(1) of this section if such supplementary information becomes known to the requested party after the applicable information response deadline established by the Presiding Officer. Except for good cause shown, the supplementing party shall complete service to the requestor of such supplemental information by no later than seven days prior to the date set for the noticed proceeding.

(2) [Clean Water Act and Safe Drinking Water Act only]. The Presiding Officer may, for good cause shown, extend the deadline for the parties to provide information as required by paragraph (b) of this section for a period not to exceed thirty days. The Presiding Officer may grant, in sequence, subsequent extensions of up to thirty days each upon an individual showing of good cause for each extension.

(d) *Service.* Each party simultaneously shall serve each set of information requests or responses to an information request personally or by first class or certified mail (or any other manner of messengered service that is no less speedy and reliable), with an attached certificate of service, upon the other party and the Presiding Officer. If, pursuant to the requirement of paragraph (a) of this section, the parties have stipulated to any other exchange of information, the parties shall promptly provide such information to the Presiding Officer.

(e) *Sanctions.* (1) Any party that fails timely:

(i) To provide the name and all supporting information required pursuant to paragraph (b)(1)(i) of this section regarding any witness may not present that witness at a proceeding under § 28.26 of this part;

(ii) To produce a document required pursuant to paragraph (b)(1)(ii) of this section may not submit, or have submitted, such a document for the administrative record at a proceeding under § 28.25 or § 28.26 of this part, or otherwise;

(iii) To provide to complainant any information required pursuant to paragraph (b)(2)(i) of this section concerning an inability to pay a civil penalty may not submit, or have submitted, any information for the

administrative record concerning its inability to pay the civil penalty requested by complainant; and

(iv) To provide to complainant any information required pursuant to paragraph (b)(2)(ii) of this section concerning net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the administrative complaint to be a violation of applicable law, may not submit, or have submitted, any information for the administrative record on such subject.

(2) Except as specifically provided in paragraph (e)(1) of this section, the Presiding Officer has discretion to impose on any party that fails to comply with the requirements of this section any sanction that is just and proper.

§ 28.25 Summary determination and accelerated recommended decision

(a) *Initiation.* In any action in which a respondent has timely responded to an administrative complaint pursuant to § 28.20 (a) or (b) of this part:

(1) Any party may request, by legal argument with or without supporting affidavits, that the Presiding Officer summarily determine any allegation as to liability being adjudicated on the basis that there is no genuine issue of material fact for determination presented by the administrative record and any exchange of information. Any party may also request, by legal argument with or without supporting affidavits, that the Presiding Officer accelerate his recommended decision on the basis that there is no compelling need for further fact-finding concerning remedy. The requesting party shall serve the request at least thirty days before any date set for a liability hearing, except that upon leave granted by the Presiding Officer for good cause shown, the requesting party may file the request at any time before the close of the liability hearing.

(2) The Presiding Officer, at any time following the initial deadline for the exchange of information under §§ 28.23 and 28.24 of this part and before the commencement of a liability hearing, and upon examination of the entire administrative record and any exchange of information by the parties, may on his own initiative summarily determine that a party is entitled to judgment as to liability as a matter of law.

(3) Upon summarily determining liability pursuant to this section, or upon stipulation by the parties as to liability, the Presiding Officer may on his own initiative and without further fact-finding accelerate the recommended decision. In reaching the recommended decision, the Presiding Officer shall consider the applicable factors set forth in § 28.21(b) of this part and (in the case of a compliance remedy under the Safe Drinking Water Act) shall consider the reasonableness of the remedy.

(b) *Response.* Any party against whom a request for summary determination or accelerated recommended decision has been made shall serve a response to the request or a counter-request no later than twenty days following receipt of the opposing party's request, or thirty days following the service of the administrative complaint, whichever is later, unless the Presiding Officer establishes a different schedule. Any party against whom a counter-request under this subsection has been made may serve a response to the counter-request no later than twenty days following receipt of the counter-request, unless the Presiding Officer establishes a different schedule. A party opposing a request or counter-request for summary determination shall show, by affidavit or by other documentation, that the administrative record and any exchange of information present a genuine issue of material fact as to liability. A party opposing a request for an accelerated recommended decision shall show, by affidavit or by other documentation, that there is a compelling need for the introduction of testimony material to the assessment of a civil penalty or (in the case of the Safe Drinking Water Act) the imposition of a compliance remedy.

(c) *Form and record of argument.* After receipt of all information associated with a request or counter-request under this section from all parties, or pursuant to paragraph (a)(2) or (a)(3) of this section, the Presiding Officer may require oral argument of each participant in order to aid the administration of justice. The Presiding Officer shall not allow argument regarding matters barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part. If the Presiding Officer allows rebuttal argument, such rebuttal shall be allowed only to the parties. The Presiding Officer shall create by written, electronic, or other permanent and reliable means a verbatim record of any oral argument presented pursuant to this section and shall file that record with the Hearing Clerk.

(d) *Basis for ruling.* (1) The Presiding Officer shall rule on a request for summary determination or an accelerated recommended decision under paragraph (a)(1) of this section promptly after he finds, based on the administrative record, any exchange of information, and any arguments of the participants, whether the participants present a genuine issue of material fact as to liability and whether a party is entitled to judgment as to liability as a matter of law. The Presiding Officer shall rule on a request for an accelerated recommended decision based on whether there is a compelling need for further fact-finding. If the Presiding Officer denies a request for an accelerated decision, the Presiding Officer shall promptly schedule an appropriate proceeding pursuant to § 28.26(h) of this part to develop the administrative record regarding an appropriate remedy.

(2) The Presiding Officer shall on his own initiative summarily determine that a party is entitled to judgment as to liability as a matter of law if he finds, based on an examination of the administrative record and any information exchanged by the parties, that the participants present no genuine issue of material fact as to liability and a party is entitled to judgment as to liability as a matter of law.

(e) *Determination of liability.* If the Presiding Officer determines that a party is entitled to judgment as to liability as a matter of law by means of summary determination, the Presiding Officer shall prepare any written recommended finding of fact and any conclusion of law corresponding to such determination. If the Presiding Officer does not accelerate a recommended decision, the Presiding Officer shall promptly serve each participant with a copy of such recommended finding and conclusion of law. If the Presiding Officer accelerates the recommended decision, upon completion of the recommended decision the Presiding Officer shall follow the procedures prescribed by § 28.27 of this part.

(f) *Determination of genuine issue of fact.* The Presiding Officer shall deny a request for summary determination of liability if he finds the administrative record and any exchange of information by the parties present a genuine issue of material fact. If the Presiding Officer denies a request for summary determination, or denies such a request in part, the Presiding Officer shall promptly issue to each participant a written ruling as to the existence of a genuine issue of material fact as to liability and the reasons for the ruling, and the action shall continue on the factual allegations over which the participants have demonstrated the existence of a genuine issue.

(g) *Supplementation of administrative record.* In any action in which the Presiding Officer has on his own

initiative determined that a party is entitled to judgment as to liability as a matter of law pursuant to paragraph (a)(2) of this section, and has based that determination in any part on any document provided pursuant to § 28.24 of this part that is not otherwise within the administrative record, the Presiding Officer shall incorporate such document into the administrative record pursuant to § 28.2(b)(15) of this part by filing it with the Hearing Clerk. The Presiding Officer shall not incorporate in the administrative record any document barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part.

Subpart C—Hearing

§ 28.26 Liability hearing.

(a) *Scope of hearing.* Except as otherwise specifically set forth in paragraphs (h), (i) and (k) of this section, the Presiding Officer shall conduct any hearing pursuant to this section necessary to determine the truthfulness of any unresolved allegation of fact (or conclusion of law based on an unresolved question of fact) as to liability which was set forth in the administrative complaint.

(b) *Conduct of hearing.* (1) The Presiding Officer shall conduct a fair and impartial proceeding in which each participant has a reasonable opportunity to be heard and to present evidence.

(2) The Presiding Officer may:

(i) Administer the oath or affirmation of a witness;

(ii) Require the authentication of any written exhibit or statement;

(iii) Examine witnesses to clarify the administrative record; and

(iv) Limit the number of witnesses and the scope and extent of any direct examination or cross-examination under this section as necessary to protect the interests of justice and conduct a reasonably expeditious hearing.

(c) *Testimony.* Each witness shall testify in the form determined by the Presiding Officer to be most efficient in resolving an issue. Forms of testimony include oral testimony provided in person or by other means, and written or otherwise recorded testimony. Testimony shall be limited to facts regarding liability and shall not include issues of law.

(d) *Admission of evidence.* The Presiding Officer shall decide which documents and testimony shall be admitted into evidence. The Presiding Officer shall admit all evidence which is relevant, material, or of significant probative value. The Presiding Officer shall not admit evidence barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part.

(e) *Official notice.* Except as prohibited by § 28.4(c) (5) or (6) of this part, the Presiding Officer may take official notice of matters judicially noticed in the federal courts, of other facts within the specialized knowledge and experience of the Agency, and of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking official notice of a matter, the Presiding Officer shall give the parties an opportunity to show cause why such notice should not be taken.

(f) *Cross-examination.* Any opposing party has a right of cross-examination after the introduction of a witness' direct testimony. A party shall not cross-examine regarding a matter that is outside the scope of the direct examination. [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] The Presiding Officer shall not allow a commenter an opportunity to cross-examine a party's witness. Agency counsel has the right to the first cross-examination of a commenter's witness.

(g) *Elements and order of presentation.* The elements of a liability hearing are set forth in paragraphs (g) (1) through (6) of this section. Unless otherwise directed by the Presiding Officer, the order of the hearing shall be as follows:

(1) Agency counsel may summarize the factual bases of the administrative complaint and intended witness testimony.

(2) The respondent may summarize the factual bases of the response and intended witness testimony.

(3) Agency counsel may offer any inculpatory testimonial or other evidence within the scope of the hearing.

(4) Respondent may offer any exculpatory testimonial or other evidence within the scope of the hearing.

(5) [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] Any commenter may introduce testimonial or other evidence within the scope of the hearing under this section if such evidence concerns an allegation identified by the commenter pursuant to §§ 28.2(g) and 28.20(c) of this part, subject to the following limitations:

(i) The commenter may offer into evidence a witness' testimony only if the commenter had notified all other participants at least twenty days prior to the commencement of the liability hearing of the name of the witness, a brief description of the witness' connection to the action, his qualifications (in the case of an expert witness), and the subject matter of the witness' intended testimony.

(ii) The commenter may offer into evidence a document only if the commenter had provided a copy of such document to all other participants at least twenty days prior to the commencement of the liability hearing.

(6) At the discretion of the Presiding Officer, the parties may present rebuttal testimony within the scope of evidence introduced at the hearing, except (in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act) the parties shall have the right to present rebuttal testimony in response to any testimony presented by a commenter's witness.

(h) *Remedy issues.* The Presiding Officer has the discretion, based on a compelling need for additional fact-finding on issues material to remedy, to allow the participants to introduce testimony on such issues. The Presiding Officer shall not allow testimony if the issues can be appropriately explored by use of legal argument and affidavits, or by the submission by the participants of written recommended findings of fact and conclusions of law pursuant to paragraph (k) of this section. If the Presiding Officer allows such testimony, he shall conduct such proceeding in the most timely and efficient manner possible. In any such proceeding, the Presiding Officer shall consider any applicable Agency policy (except any Agency policy, or portion thereof, that applies to settlement of a penalty claim) concerning the assessment of an administrative penalty.

(i) *Closing argument.* After all evidence has been presented at the hearing, the Presiding Officer may allow the participants to present an oral closing statement regarding issues of liability and of remedy, and may allow the participants to submit any documentation regarding remedy.

(j) *Hearing record.* The Presiding Officer shall create by written, electronic, or other permanent and reliable means a verbatim record of the hearing and shall file that record with the Hearing Clerk.

(k) *Findings and conclusions.* The Presiding Officer may request the participants to submit, within a reasonable time after the conclusion of the hearing, proposed recommended findings of fact and conclusions of law, as well as any documentation regarding remedy. The Presiding Officer shall, after the conclusion of a hearing and the submission of any documents requested pursuant to this section, follow the

procedures prescribed by § 28.27 of this part.

SUBPART D—POST-HEARING

§ 28.27 Recommended decision.

(a) *Preparation and transmission.* Within a reasonable time following any remedy proceeding pursuant to § 28.21(b), § 28.25 or § 28.26(h) of this part, or upon a determination by the Presiding Officer pursuant to § 28.21(a)(2)(ii) or § 28.25 of this part that the complainant has failed to carry its burden of going forward pursuant to the provisions of § 28.10(a) of this part, or upon a determination by the Presiding Officer that the complainant has failed to carry any burden of proof pursuant to §§ 28.10(d) and 28.26 of this part, the Presiding Officer shall:

(1) Certify the administrative record as complete to date and in compliance with all requirements of this part;

(2) Make the administrative record available to the Regional Administrator; and

(3) Prepare and transmit a recommended decision to the Regional Administrator.

(b) *Publication.* The Presiding Officer shall file a copy of the recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator and the Hearing Clerk immediately shall serve each participant with a copy of the recommended decision.

§ 28.28 Decision of the Regional Administrator.

(a) *Contested or default order.* In any action in which the Regional Administrator receives a recommended decision from the Presiding Officer, the Regional Administrator shall:

(1) Base his decision on the administrative record and the applicable law;

(2) Within a reasonable time following receipt of the Presiding Officer's recommended decision:

(i) Withdraw the administrative complaint on the basis that the administrative complaint does not state a cause of action or that the allegations of fact and conclusions of law in the administrative complaint are not supported by the administrative record; or

(ii) Issue an order on the basis that the administrative record and applicable law support such an order; and

(iii) If the Regional Administrator rejects the recommendation of the Presiding Officer in whole or in part, provide a written explanation for that rejection that states each point of disagreement with the recommendation of the Presiding Officer.

(3) Upon issuance of an order pursuant to applicable law, provide a written decision that is supported by clear reasons and the administrative record and includes a statement of the right of judicial review and of the procedures and deadlines for obtaining judicial review. The order shall be comprised of the Regional Administrator's findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of any applicable law as alleged in the administrative complaint, conclusions of law, assessment of an appropriate penalty after taking into account all applicable statutory penalty factors, and, if applicable (in the case of the Safe Drinking Water Act), requirement of compliance with applicable requirements. [Section 309(g) of the Clean Water Act only]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, the order shall state that the commenter has the right to petition to set aside the order pursuant to § 28.30 of this part.

(b) *Consent order.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only].

(1) In any action in which the Regional Administrator receives a proposed consent order from the Hearing Clerk pursuant to § 28.22(b)(4) of this part, the Regional Administrator shall determine whether the proposed consent order meets the requirements of this part and applicable law by reviewing the proposed order, the administrative record, and any written explanation of the legality of the order submitted upon his request by the signatory parties.

(2) Within a reasonable time following its receipt, without amendment and by his signature the Regional Administrator shall either approve and issue or disapprove the proposed consent order. If the Regional Administrator disapproves the proposed consent order, he shall provide the signatory parties with a written explanation for the disapproval based on the factors set forth in paragraph (b)(1) of this section.

(c) *Publication.* The Hearing Clerk shall, within seven days of the signing of an order by the Regional Administrator under this section, send a copy of the order:

(1) To the Presiding Officer, each participant, and any defaulted respondent; and

(2) To the Administrator, if the order was issued pursuant to paragraph (a) of this section.

(d) *Completion of administrative record.* The Regional Administrator shall file with the Hearing Clerk the record of any sanction he imposes under § 28.12(c)(2) or § 28.13(c) of this part, any decision he makes regarding a request for an alternate Presiding Officer under § 28.13(b) of this part, any written explanation submitted by the parties pursuant to § 28.22(b)(1)(ii) of this part in support of a consent order that has been approved by the Regional Administrator, any action of the Administrator pursuant to § 28.29 of this part, any written explanation of a rejection of the recommendation of the Presiding Officer pursuant to paragraph (a)(2)(iii) of this section, any order the Regional Administrator issues pursuant to this section, any other significant action he takes in an action under this Part other than a written explanation of his disapproval of a proposed consent order, and (in the case of an action pursuant to section 309[g] of the Clean Water Act) any evidence submitted by a petitioner pursuant to § 28.30 of this part and any decision to grant a petition pursuant to § 28.30(b) of this part.

(e) *Date of issuance.* For purposes of appeal, an order of the Regional Administrator pursuant to this part shall be deemed to be issued five days following the date of mailing of the Regional Administrator's order to respondent.

(f) *Effective date.* Any order issued pursuant to this part becomes effective thirty days following its date of issuance unless before that date:

(1) [Section 309(g) of the Clean Water Act only]. An appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, 33 U.S.C. 1319(g)(8), or a commenter files a timely petition pursuant to § 28.30 of this part. If the Regional Administrator denies such a petition, the order becomes effective thirty days after such denial;

(2) [Section 311(b)(6) of the Clean Water Act only]. An appeal is taken pursuant to section 311(b)(6)(G) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(G);

(3) [Safe Drinking Water Act only]. An appeal is taken pursuant to Section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6);

(4) [CERCLA only]. An appeal is taken pursuant to section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4);

(5) [EPCRA only] An appeal is taken pursuant to section 325(f)(1) of EPCRA, 42 U.S.C. 11045(f)(1); or

(6) The Administrator suspends the implementation of the order pursuant to § 28.29 of this part.

(g) *Final Agency action.* The issuance of an order by the Regional Administrator pursuant to this section

constitutes final Agency action on its effective date for purposes of the Administrative Procedure Act, 5 U.S.C. 551.

§ 28.29 Sua sponte review.

The Administrator may, on his own initiative, within thirty days of the date of issuance by the Regional Administrator of a contested or default order under § 28.28(a) of this part, suspend implementation of such order for the purpose of reviewing its conclusions of law or its sufficiency pursuant to § 28.28(a)(3) of this part. The Administrator, after such review, may amend its conclusions of law, withdraw the order, remand the order for appropriate action by the Regional Administrator, or may allow the order to issue unchanged. In any action in which the Administrator acts pursuant to this section, the provisions of § 28.28 of this part shall apply, except that:

(a) The Regional Administrator who issued an order shall be deemed the recommending Presiding Officer for purposes of § 28.28;

(b) Upon suspension of the order, the Administrator who suspended an order shall be deemed the Regional Administrator for purposes of § 28.28;

(c) The Regional Administrator's order, except for its findings of fact, shall be deemed a recommended decision; the Regional Administrator's findings of fact are findings of fact for purposes of this part and not subject to review by the Administrator;

(d) If the Administrator does not amend the Regional Administrator's conclusions of law nor determine that the order is insufficient pursuant to § 28.28(a)(3) of this part, the Regional Administrator's determination of remedy is not subject to review; if the Administrator does amend the Regional Administrator's conclusions of law or determines such insufficiency, the Regional Administrator's determination of remedy shall be remanded by the Administrator to the Regional Administrator for appropriate action, except that if the Administrator determines the respondent is not liable at all under applicable law, the Administrator shall withdraw the administrative complaint and the order of the Regional Administrator without remand;

(e) If the Administrator allows the order to issue unchanged, the requirements of § 28.28(a)(3) of this part shall not apply;

(f) If the Administrator withdraws, amends or remands the order, the requirement of § 28.28(a)(3) of this part to make findings of fact and to order a remedy shall not apply; and

(g) The Administrator's decision to suspend implementation of an order shall not be deemed final Agency action for the purposes of § 28.28(g) of this part or the Administrative Procedure Act, 5 U.S.C. 551.

§ 28.30 Petition to set aside an order. [Section 309(g) of the Clean Water Act only]

(a) *Initiation.* In any action under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), in which the Regional Administrator has issued an order pursuant to § 28.28 of this part, any commenter participating in that action may, no later than thirty days after the date of issuance of the order under § 28.28(e) of this part, petition the Regional Administrator to set aside the order and to provide a hearing on liability or a proceeding on the penalty if the commenter at the time of petitioning files with the Hearing Clerk material evidence not considered in the issuance of the order and:

(1) The Presiding Officer had failed to afford the commenter an opportunity to present information in a proceeding conducted under § 28.25 or § 28.26 of this part in the referenced Agency action, or in an action concluded by consent order under §§ 28.22(b) and 28.28(b) of this part; or

(2) The Regional Administrator issued the order pursuant to § § 28.21 and 28.28(a) of this part after the respondent had timely failed to respond to the administrative complaint pursuant to the requirements of § 28.20 of this part or was defaulted by sanction, without the commenter having had an opportunity to present information in a proceeding conducted under § 28.25 or § 28.26 of this part in the referenced Agency action.

(b) *Granting of petition.* The Regional Administrator shall grant the petition and set aside the order if he finds that the petitioner meets the requirements of paragraph (a) of this section. If the Regional Administrator grants the petition, he shall instruct the Presiding Officer to conduct an appropriate proceeding pursuant to § 28.21(b), § 28.25 or § 28.26 of this part.

(c) *Denial of petition.* The Regional Administrator shall deny the petition if he determines that the petitioner has failed to meet the requirements of paragraph (a) of this section. If the Regional Administrator denies the petition, he shall notify the complainant, the petitioner and the respondent by certified mail, return receipt requested, and shall publish notice of such denial in the **Federal Register**, together with his reasons for the denial.

§ 28.31 Payment of assessed penalty.

Except as may be otherwise provided by applicable law and the provisions of any consent order, the respondent shall pay within thirty days of the effective date of the order any civil penalty assessed pursuant to this part by forwarding to the address provided by the complainant a cashier's or certified check, payable to:

(a) [Safe Drinking Water Act, EPCRA and section 309(g) of the Clean Water Act only] "Treasurer, The United States of America."

(b) [Section 311(b)(6) of the Clean Water Act only] "Oil Spill Liability Trust Fund."

(c) [CERCLA only] "EPA Hazardous Substance Superfund."

The respondent shall note on each check in payment the case title and docket number of the administrative action. The respondent shall simultaneously send notice of payment to the Hearing Clerk. The Presiding Officer may waive the requirement of payment by cashier's or certified check for good cause shown. In no case shall the Presiding Officer waive the requirement of payment by certified or cashier's check if such a waiver may endanger the Agency's receipt of funds.

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Monday
July 1, 1991

Part III

Securities and Exchange Commission

17 CFR Parts 200, et al.

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 210, 229, 230, 239, 240, 249, 260 and 269

[Release Nos. 33-6902; 34-29354; 39-2267; IC-18210; International Series Release No. 291]

RIN 3235-AC64

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is announcing the adoption of rules, forms and schedules intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers. To remove unnecessary impediments to transnational capital formation, this multijurisdictional disclosure system permits Canadian issuers meeting eligibility criteria to satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities. The multijurisdictional disclosure system also allows certain cash tender and exchange offers for securities of Canadian issuers to proceed in accordance with Canadian and provincial or territorial tender offer requirements instead of in accordance with Commission tender offer requirements.

In connection with the multijurisdictional disclosure system, the Commission also is announcing the adoption of revisions to existing rules and forms to permit registration and reporting under the Securities Act of 1933 and the Securities Exchange Act of 1934 by Canadian foreign private issuers on the same basis as other foreign private issuers.

Concurrently with the publication of this Release, the Canadian Securities Administrators are publishing a National Policy Statement that adopts a largely parallel multijurisdictional disclosure system in Canada. That system permits U.S. issuers to satisfy certain securities registration and reporting requirements in Canada using disclosure documents prepared in accordance with Commission requirements. That National Policy Statement is published as an appendix to this Release.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; John C. Maguire, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Felicia Smith, 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 Sanow or George Scargle, Office of Legal Policy and 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 adopting new Forms F-7, F-8, F-9, F-10 and F-80 under the Securities Act of 1933 (the "Securities Act"); new Form 40-F and new Schedules 14D-1F, 14D-9F and 13E-4F under the Securities Exchange Act of 1934 (the "Exchange Act"); and new Form F-X under the Securities Act, the Exchange Act and the Trust Indenture Act of 1939 (the "Trust Indenture Act"). The Commission further is adopting: New rule 467, revisions to rules 158, 175, 424, 473 and 502 and revisions to Forms S-2, S-3, S-4, S-8, S-11, F-1, F-2, F-3 and F-4 under the Securities Act; new rules 12h-4, 13a-3, 13e-4(g), 14d-1(b), 14e-2(c), 15d-4, and 15d-5(c), revisions to rules 3a12-3(b), 3b-6, 12g-3, 12g3-2, 13a-10, 13a-16, 15d-5(b), 15d-10 and 15d-16, and revisions to Forms 20-F, 6-K and 10-K under the Exchange Act; new rules 4d-9 and 10a-5 and revisions to rules 0-11 and 10a-4 and revisions to Forms T-1 and T-6 under the Trust Indenture Act; revisions to rules 3-01, 3-02, 3-12, and 3-19 of Regulation S-X; revisions to Items 302, 402, 404 and 601 of Regulation S-K; revisions to rules 30-1(f) and 30-3 of the Commission's Rules Delegating Authority to Division Directors; and revisions to rule 24 of the Commission's Rules of Practice.

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I. Executive Summary

The multijurisdictional disclosure system with Canada ("MJDS") being adopted by the Commission is intended to facilitate the free flow of capital. As a result of the MJDS, a securities offering made in two countries will be regulated in only one. Cross-border offerings in the United States and Canada thus can be made more efficiently and at less expense. Offerings of investment grade securities and offerings of equity securities by certain large issuers, rights offerings, exchange offers and business combinations, all may be conducted under the MJDS. Canadian issuers that meet specified eligibility tests may register securities with the Commission through disclosure documents they have prepared for Canadian regulatory authorities. In addition, specified Canadian issuers may use Canadian disclosure documents to satisfy the Commission's periodic disclosure requirements and tender offer regulations. Pursuant to new rules being

adopted under the Trust Indenture Act of 1939 (the "Trust Indenture Act"),[1] Canadian institutional trustees may act as sole trustees in MJDS debt offerings, and exemptions from certain Trust Indenture Act provisions are established for indentures governing MJDS debt securities.

The MJDS is not available for securities issued by investment companies that are registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act"),[2] but it is available to investment companies exempt from registration under the Investment Company Act.

In conjunction with the MJDS, the Commission is adopting revisions to rules and forms that affect all Canadian issuers. All Canadian foreign private issuers are now eligible to use the forms designed for registration and reporting by foreign companies under the Securities Act of 1933 (the "Securities Act") [3] and the Securities Exchange Act of 1934 (the "Exchange Act").[4] Moreover, all Canadian foreign private issuers are now exempt from the Commission's proxy requirements and from application of the share ownership reporting requirements and short-swing profit recapture provisions of the Exchange Act.

Concurrently with this release, the Canadian Securities Administrators ("CSA") are publishing a National Policy Statement that adopts a multijurisdictional disclosure system for U.S. issuers in Canada.[5] In addition, as a result of coordination by the Commission and Canadian regulators with the North American Securities Administrators Association ("NASAA"), securities regulators at the state level are in the process of adopting rules to accommodate MJDS offerings.[6]

While Canada is the partner of the United States in this inaugural multijurisdictional disclosure initiative, the MJDS is designed with the intention of mitigating on a broader scale the difficulties posed by multinational offerings. Thus, the Commission is continuing its work with securities regulators of other countries with a view toward extending the multijurisdictional disclosure system. In addition, the Commission has proposed rules that would facilitate rights offers and exchange and tender offers relating to foreign securities held in limited amounts in the United States on a similar basis as the MJDS.[7]

[1] 15 U.S.C. 77aaa–77bbbb.

[2] 15 U.S.C. 80a–1 *et seq.*

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] *See infra* section III.J.

[6] *See infra* section VI.

II. Background

In recent years, there has been substantial growth in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States.[8] Part of the growth in such 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 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). In other cases, such offerings are made because the relative cost of financing so dictates, the size of the offering is such that it cannot be absorbed by the issuer's domestic market, or the issuer needs to reach a particular group of securityholders or a broader investor base.

With the increase in U.S. ownership of foreign securities, the unwillingness of foreign issuers to extend rights offers, business combinations, exchange offers or cash tender offers to U.S. shareholders has become increasingly significant. Rather than comply with the requirements of regulators in more than one country, foreign issuers choose at times to exclude jurisdictions such as the United States from their offerings. As a result, U.S. holders are denied the opportunity to realize significant value on their foreign investments.[9]

[7] See Securities Act Release No. 6896 (June 5, 1991) (rights offerings) and Securities Act Release No. 6897 (June 5, 1991) (exchange and tender offers).

[8] In 1990, U.S. investors purchased $130.9 billion and $335.9 billion of foreign equity securities and debt securities, respectively, compared to $24.8 billion and $85.2 billion in 1985. Source: U.S. Treasury Bulletin (various issues). Debt offerings outside the United States by U.S. issuers totalled $20.3 billion in 1990, $19.8 billion in 1989 and $19.8 billion in 1988. Source: IDD Information Services. The value of international offerings of common and preferred stocks in 1989 was $15.7 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.

[9] For example, to avoid filing a registration statement in the United States, foreign exchange offerors exclude U.S. shareholders or restrict them to receiving cash. Investors therefore 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 foreign corporate law. In the case of rights offers, U.S. investors may be given cash that amounts to less than the market value of the right or may be excluded entirely.

In light of the growth of multinational offerings and the concerns of U.S. investors wishing to participate in them, the Commission has been making significant efforts to remove impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets or failing to afford the protections intended by the Securities Act and the Exchange Act to those buying securities in the U.S. capital markets. The Commission has accommodated various foreign disclosure policies and business practices, and has special forms available for use by foreign issuers. Nevertheless, when a multinational offering includes a public U.S. tranche, the disclosure requirements established by the Commission may dictate the addition of information to selling documents prepared in accordance with another jurisdiction's rules.[10] In addition, attempting to comply with the requirements of multiple jurisdictions can be 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. Also, because registration under the Securities Act brings with it periodic reporting requirements under the Exchange Act, a foreign issuer deciding whether to register securities must consider the burden of ongoing reporting.

On July 24, 1989, the Commission proposed for comment rules, forms, and schedules to provide the foundation for a multijurisdictional disclosure system to facilitate cross-border securities offerings by certain Canadian issuers.[11] Such offerings included rights offerings and exchange offers, as well as offerings of investment grade securities and equity securities by larger issuers. The Ontario Securities Commission ("OSC") and the Commission des valeurs mobilieres du Quebec ("CVMQ") concurrently issued for comment proposals concerning the establishment of a multijurisdictional disclosure

[10] 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, issuers tend to provide the same disclosure in each market due to liability concerns.

[11] Securities Act Release No. 6841 (July 24, 1989) [54 FR 32226] (the "Original Proposal").

system in Canada for certain U.S. issuers.[12]

After reviewing the comments received on the Original Proposal,[13] which were generally supportive but suggested refinements, the Commission proposed for comment on October 22, 1990 a revised multijurisdictional disclosure system.[14] While many aspects of the system remained the same, the Reproposal reflected refinements to each of the originally proposed forms and broadened the Original Proposal by, *inter alia*, expanding the class of issuers eligible to make rights offerings under the system and expanding the system to cover business combinations. In connection with the Reproposal, the Commission also proposed for the first time in conjunction with the MJDS revised rules and forms to place Canadian foreign private issuers on an equal footing with all other foreign private issuers with respect to registration and reporting. Shortly after publication of the Reproposal, the Canadian Securities Administrators published for comment a revised, largely parallel, multijurisdictional disclosure system in Canada for certain U.S. issuers.[15]

The Commission is adopting the MJDS with limited changes from the Reproposal. Canada is the logical first partner for the United States in such an initiative because of the significant presence of Canadian companies in the U.S. trading markets. More than 100 Canadian issuers are listed on the New York Stock Exchange or the American Stock Exchange or are quoted on the National Association of Securities Dealers' Automated Quotation ("NASDAQ") National Market System. Of the 463 foreign issuers filing periodic reports with the Commission under the Exchange Act, more than 240 are Canadian.[16] Canadian companies also are relatively frequent issuers in the U.S. capital markets. In 1989 and 1990 alone, Canadian private issuers made a total of 54 public offerings in the United States, offering approximately $11.9 billion of securities.[17] The Commission's development of the MJDS with Canada is a first step in meeting the needs of issuers making transnational securities offerings.

III. The Multijurisdictional Disclosure System

A. Overview of the MJDS

To register securities for an offering under the MJDS, a Canadian issuer essentially will take the offering document it prepared under Canadian law and file it with the Commission along with a cover page, certain legends and various exhibits. The Commission finds that permitting certain Canadian issuers to register securities under the MJDS using their home jurisdiction disclosure documents instead of using disclosure documents prepared in accordance with the Securities Act specifications is in the public interest and fully adequate for the protection of U.S. investors.

The MJDS encompasses registration of equity securities and investment grade debt or preferred securities of large Canadian issuers. Registration under the MJDS also is available for specified exchange offers, business combinations and rights offers of a broader class of smaller Canadian issuers. The broader availability of the MJDS for those types of offerings reflects the interests of U. S. investors in not being excluded from transactions that will affect the value of their existing holdings. Where U. S. holders have less than 40 percent of the target shares in the case of an exchange offer and less than 40 percent of the shares of the successor registrant at the close of a business combination, the MJDS may be used to register the securities being offered.

For any type of MJDS offering, the Canadian issuer must have at least a three-year history of reporting with a Canadian securities regulatory authority. Except in the case of rights offerings and offerings of certain non-convertible investment grade securities, an issuer also must satisfy specified size tests of minimum market value and/or public float.

Issuers eligible to rely upon the MJDS include only Canadian "foreign private issuers" [18] and, for specified offerings, Canadian crown corporations. Foreign issuers that do not meet the definition of "foreign private issuer" are in essence U.S. issuers and therefore must use the same forms as U.S. issuers for purposes of registration and reporting under the Securities Act and Exchange Act.[19] Canadian crown corporations are those corporations all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

Two new rules under the Trust Indenture Act are also being adopted for use in connection with MJDS offerings. New Rule 10a–5 permits Canadian institutional trustees subject to supervision or examination by Canadian federal authorities to act as sole indenture trustees in debt offerings under the MJDS. That Rule gives effect to a provision of the Trust Indenture Reform Act of 1990 [20] conditionally permitting the Commission to authorize sole trusteeships by foreign persons. New rule 4d–9 provides an exemption from specified provisions of the Trust Indenture Act for indentures governing debt securities sold under the MJDS where the indentures are subject to similar substantive provisions through the regulatory schemes for trust indentures under the federal law of Canada or the law of Ontario.

The issuer's home jurisdiction periodic reports are used under the MJDS to satisfy reporting requirements under the Exchange Act that arise solely by reason of registering securities offerings on the MJDS forms, or when the issuer of the securities meets certain tests of market value, public float and reporting history. Other than

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[12] See "Multijurisdictional Disclosure System—Request for Comments" at 12 O.S.C.B. 2919 (July 28, 1989) and 20 Q.S.C. Bulletin No. 29 (July 21, 1989).

[13] Thirty-five comment letters on the original proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[14] Securities Act Release No. 6879 (Oct. 22, 1990) (55 FR 46288) (the "Reproposal"). The Original Proposal and the Reproposal of the MJDS are referred to collectively herein as the "Proposals." Thirty-four comment letters on the Reproposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[15] "Multijurisdictional Disclosure System—Request for Comments" at 13 O.S.C.B. 4573 (Nov. 2, 1990).

[16] The next most numerous groups of reporting issuers are from the United Kingdom (49) and Israel (30)

[17] 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).

[18] "Foreign private issuer" is defined in rule 3b–4 under the Exchange Act (17 CFR 240. 3b–4) and rule 405 under the Securities Act (17 CFR 230. 405) to include all foreign issuers other than (i) foreign governments, and (ii) foreign issuers that have more than 50 percent of their outstanding voting securities held of record by U. S. residents and that also have: U. S. citizens or residents making up a majority of their executive officers and directors; more than 50 percent of their assets located in the United States; or their business administered principally in the United States.

[19] Contrary to commenters' concerns, the business of a Canadian issuer that is a subsidiary of a U. S. company will not be deemed automatically to be "principally administered in the United States" (as defined in the foreign private issuer definition) by virtue of such parent-subsidiary relationship. The determination of the location of administration of a business will be made in light of all the facts and circumstances in a particular case.

[20] Title IV, Public Law No. 101–550, 1990 U.S. CODE CONG. AND ADMIN. NEWS (104 Stat.) 2713, 2721–32.

requirements relating to English translations, a consent to service of process and, in limited cases, a reconciliation of financial statements, the MJDS disclosure is based on incorporation of the registrant's home jurisdiction documents in their entirety. In addition, a newly adopted exemption eliminates the Commission's reporting obligation that otherwise would arise by reason of Securities Act registration under the MJDS in connection with most rights offers, exchange offers and business combinations.

Financial statements included in MJDS disclosure documents may be audited in accordance with generally accepted auditing standards in Canada.[21] Except in rights offerings,[22] compliance with U.S. auditor independence requirements must commence with the audit report on the financial statements for the most recent fiscal year included in the first MJDS filing and continue for each report thereafter. For prior periods, compliance with Canadian independence standards is sufficient.

Under revisions being adopted to an exemptive provision under the Exchange Act, securities of Canadian foreign private issuers are exempt from the share ownership reporting requirements and short-swing profit recapture provisions of section 16 of the Exchange Act.[23] In addition, securities of Canadian foreign private issuers previously subject to U.S. proxy regulations are now exempt from the requirements of Exchange Act sections 14(a), 14(b), 14(c) and 14(f) under such revised exemption.

The MJDS also extends 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, if less than 40 percent of the target shares are held by U.S. holders. In addition, general exemptions under Exchange Act rules 10b–6 [24] and 10b–13 [25] are provided under the MJDS to permit specified purchases of securities during qualifying tender and exchange offers.[26]

Review of a disclosure document submitted under the MJDS will be that customary in Canada.[27] Thus, except in the unusual case where the Commission staff has reason to believe there is a problem with the filing or the offering, the MJDS registration statements generally will be given a "no review" status by the Commission. Further, the MJDS forms for registration under the Securities Act will be made effective automatically upon filing with the Commission except where no contemporaneous offering is being made in Canada and where preliminary materials are being filed. In the case of offerings not made contemporaneously in Canada, such registration statements will be made effective after the Canadian securities regulator has completed its review.

Issuers using the MJDS continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities are offered. Issuers are subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

B. Securities Act Registration

1. Offerings by Substantial Issuers

The purpose of the "substantial" designation is to single out issuers whose size is such that there is a large market following for them and the marketplace can be expected to have set a price for their securities based on all publicly available information.[28] The Commission has distinguished for this purpose between investment grade securities and other securities and has provided separate registration forms for each. "Substantial" issuers in the context of convertible investment grade securities [29] are issuers that have a total market value for their equity shares [30] of at least (CN) $180 million and for their public float [31] of at least (CN) $75 million.[32] (For non-convertible investment grade securities, issuers need not meet the "substantial" test.[33]) "Substantial" in the context of registration of all other securities includes those issuers with a market value for their equity shares of at least (CN) $360 million and a public float of (CN) $75 million. The market value of equity shares and public float tests may be measured as of any date within 60 days prior to the date of filing.[34]

a. Offerings of Any Securities by Substantial Issuers (Form F–10). Securities offered for cash or in connection with exchange offers or business combinations may be registered on Form F–10 by substantial Canadian issuers.[35] To be eligible to use Form F–10, the issuer must have been reporting with Canadian securities regulators for the 36 months immediately prior to filing and be in compliance with such regulators' requirements at the time of filing.[36] As

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[21] See, *e.g.*, Canadian Institute of Chartered Accountants Auditing Guideline, "Canada-United States reporting conflict with respect to contingencies and going concern considerations" (December 1988).

[22] U. S. auditor independence requirements have been deleted from Form F–7, however, since the Reproposal.

[23] 15 U.S.C. 78p.

[24] 17 CFR 240.10b–6.

[25] 17 CFR 240.10b–13.

[26] See infra Section III.E. In addition to these anti-manipulation rules under the Exchange Act, rules 10b–7 (17 CFR 240.10b–7) and 10b–8 (17 CFR 240.10b–8) thereunder may apply to offers or sales of securities pursuant to transactions covered by the MJDS.

[27] To facilitate such review, home country disclosure documents to be filed with the Commission under the MJDS for a U.S.-only offering nevertheless must be filed with the Canadian securities regulatory authorities.

[28] 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.").

[29] Such securities may be convertible only after one year from the date of issuance.

[30] The term "equity shares" is defined to include common shares, non-voting equity shares, and subordinate or restricted voting equity shares, but does not include preferred shares.

[31] The market value of the "public float" is the market value of all outstanding equity shares owned by non-affiliates. Under the MJDS, Canadian issuers include non-voting common stock in the calculation of public float. As defined under the MJDS, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. Adoption of this definition of "affiliate" for this purpose is neither intended to alter the definition of affiliate otherwise applied under the Securities Act nor to bear upon the interpretation or application of such definition.

[32] These requirements are expressed in terms of Canadian currency, rather than U.S. currency, so that fluctuations in exchange rates do not affect an issuer's eligibility to use the Form.

[33] Similarly, Form 40–F allows satisfaction of reporting obligations in connection with non-convertible Form F–9 eligible securities without reference to a public float or market value test. See General Instruction A. (2) to Form 40–F.

[34] The measurement of market value for purposes of other MJDS forms is accomplished in the same fashion. See, e. g., Forms F–8, F–80 and 40–F.

[35] Unlike the Reproposal, Forms F–10, F–8 and F–80 clarify that the MJDS may not be used for registration of derivative securities except certain warrants, options, rights and convertible securities. Warrants, options and rights may be registered on those Forms only if such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either. Similarly, convertible securities may be registered on those Forms only if convertible into securities of the registrant, its parent or an affiliate of either. Securities such as stock index warrants, currency warrants and debt paying interest calculated on the performance of a stock index therefore are not eligible for registration under the MJDS.

[36] All of the MJDS Securities Act registration forms permit registration by an issuer who is the product of a recent statutory business combination. Such issuers otherwise would be ineligible to register under the MJDS due to the issuer 36-month reporting history requirement. To determine eligibility for such issuers, the reporting history of

Continued

with all other MJDS forms, the issuer of the securities must be a foreign private issuer [37] and must be incorporated or organized under the laws of Canada or any Canadian province or territory.[38]

Form F–10 is available for the registration of debt securities or preferred stock of a Canadian-organized, majority-owned subsidiary. Where a Canadian parent satisfies the three-year reporting history, the (CN) $360 million market value and the (CN) $75 million public float tests, and fully and unconditionally guarantees the securities, the subsidiary as well as the guarantor qualifies to use Form F–10.[39] Such debt securities or preferred stock may be convertible or exchangeable, but only for the securities of the parent company.

If the filing is made prior to July 1, 1993, reconciliation to U. S. GAAP as specified in Item 18 of Commission Form 20–F is required for any financial statements included in Form F–10 pursuant to home jurisdiction requirements.[40] Item 18 requires the full disclosure of information required by Regulation S–X and U. S. CAAP, including segment information and supplemental oil and gas data. Filings on Form F–10 made on or after July 1, 1993 will not be subject to any requirement to reconcile the financial statements to U. S. GAAP, absent future action by the Commission to the contrary.

b. Offerings of Investment Grade Debt and Preferred Stock by Substantial Issuers (Form F–9). Registration on Form F–9 is permitted for offerings of investment grade debt securities or investment grade preferred stock, if such securities are either non-convertible or are convertible only after one year from the date of issuance. Form F–9 securities may only be convertible into another class of securities of the issuer or, in the case of guaranteed securities discussed below, the parent. The issuer must be either a foreign private issuer or a crown corporation, and must be of "substantial" size if the securities are convertible. A foreign private issuer (or, in the case of guaranteed securities, its parent) must have a 36-month reporting history with a Canadian securities regulatory authority and be in compliance with such reporting requirements at the time of filing Form F–9. A crown corporation need only have a 12-month Canadian reporting history to be eligible.[41]

The "investment grade" determination has to be made by a nationally recognized statistical rating organization ("NRSRO").[42] Under the Reproposal, securities would have been deemed "investment grade" if, at the time of effectiveness of the registration statement, at least one NRSRO had rated the security in one of its three highest rating categories that signifies investment grade. The Commission indicated in the Reproposal, however, that to the extent the fourth highest rating category is recognized in the future by Canadian regulatory authorities as signifying investment grade under the MJDS, the Commission would give parallel recognition. In light of such subsequent recognition,[43] Form F–9 as adopted refers to registration of securities with the fourth highest rating.

In a parallel fashion to Form F–10, Form F–9 is available for certain issuers of guaranteed securities. A majority-owned Canadian subsidiary issuing investment grade debt or preferred stock does not have to satisfy the 36-month reporting requirement or the market value or public float tests if the securities are fully and unconditionally guaranteed by a parent that is eligible to use Form F–9. Such securities may be convertible or exchangeable, but only after a year from the date of issuance and only for securities of the parent company.[44]

2. Exchange Offers and Business Combinations (Forms F–8 and F–80)

a. Exchange Offer Registration. Form F–8 is available for Securities Act registration in connection with exchange offers [45] for a Canadian issuer's securities in which the securities being registered are all or a portion of the consideration offered.[46] Except for issuer exchange offers, which may be registered without regard to the issuer's public float, Form F–8 registrants must have a public float for their equity shares with a market value that equals or exceeds (CN) $75 million.[47]

Registrants under Form F-8 also must have their securities listed on The Toronto Stock Exchange, The Montreal

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the registrant is combined with each of its predecessor companies in turn. If in each case the aggregate reporting history exceeds 36 months, the issuer may use the form. For example, if A had been reporting for 4 years in Canada, and B had been reporting for 2 years in Canada, and A and B in a business combination formed C, which has been reporting for 1 year in Canada, C would be deemed to meet the 36-month reporting history requirement. The one year of reporting by C when added to the reporting history of A and when added to the reporting history of B in each case is 36 months or more. If, however, either A or B had been reporting for under 2 years, C would not be deemed to satisfy the 36-month reporting history test. The reporting history test disregards, however, the reporting history of any predecessor if the reporting histories of other predecessors whose assets and gross revenues would contribute at least 80 percent of the assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years prior to the business combination, each meet the reporting history requirement in combination with the successor. In the case of Forms F–7, F–8 and F–80, the one-year listing history may be satisfied by combining the listing history of the successor with that of its predecessors in a similar manner.

[37] Since no crown corporation would have been able to use the MJDS forms requiring all registrants to have a minimum public float (because all crown corporations have their equity shares wholly owned by the Canadian government, a province or territory), and since crown corporations are not known to make rights offers, Forms F–10, F–8, F–80 and F–7 as adopted do not apply to crown corporations.

[38] As in all other MJDS Securities Act forms, the measurement of eligibility is made at filing. An issuer that becomes ineligible for use of an MJDS form after the effective date of such form will not be precluded from its usage for such offering.

[39] The guarantee must be as to principal and interest (if debt) or liquidation preference, redemption price and dividends (if preferred securities). Similar treatment for registration of guaranteed securities is provided in existing Securities Act forms. See General Instruction I. A. 6. of Form F–3, General Instruction I. C. of Form S–3, and General Instructions I. G. of Forms S–2 and F–2. Registration of the guarantee as well as the subsidiary's securities may be made on Form F–10. If the subsidiary's securities are convertible, the parent's securities into which they may be converted also would be registered on Form F–10.

[40] Commission rules do not govern which financial statements must be included in the MJDS Forms. Only those financial statements required in the home country disclosure document will be included, but those included in Form F–10 must be reconciled.

[41] Since only a small percentage of crown corporations are reporting in Canada, the Form as adopted reduces the reporting history requirement from 36 months to 12 months in order to facilitate use by those crown corporations that begin reporting in the future.

[42] NRSRO is used herein as that term is used in rule 15c3–1(c) (2) (vi) (F) under the Exchange Act, 17 CFR 240. 15c3–1(c) (2) (vi) (F).

[43] See National Policy Statement No. 45.

[44] Registration of the parent's securities for which the subsidiary's securities are convertible or exchangeable may not, however, be made on Form F–9 unless such securities are Form F–9-eligible securities.

[45] "Exchange offers," as the term is used in the MJDS, do not include exchange offers undertaken to accomplish a business combination.

[46] 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. See *infra* section III.D. regarding Williams Act regulation under the MJDS.

[47] Exchange offer securities also may be registered on Form F–9 or F–10 if the offeror is eligible to use such forms, without regard to the percentage of securities held by U.S. holders. Williams Act tender offer requirements in connection with an exchange offer registered on Form F–9 or F–10, however, may not be satisfied by use of MJDS Schedule 14D–1F or 13E–4F if the 40 percent U.S. ownership threshold of such Schedule is met or exceeded.

Exchange or the Senior Board of The Vancouver Stock Exchange for the most recent 12 months prior to filing, and have been reporting with a Canadian securities regulator for the most recent 36 months. The issuer also must be in compliance with such listing and reporting requirements at the time of filing. The combined reporting and listing requirement has replaced the 36-month listing history requirement under the Reproposal in order to provide greater flexibility in use of Form F–8 and in response to comments by Canadian regulators.

The target of the bid, like the registrant, must be a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory. To prevent discrimination among holders of the class of securities that is the subject of the offer, the bidder is required to offer its securities to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

Under the Reproposal, use of Form F–8 would have been limited to situations in which less than 20 percent of the securities of the target class was held of record by U.S. residents (other than U.S. affiliates) as of the end of such issuer's last quarter. Comment was solicited by the Commission, however, with regard to whether the 20 percent ceiling for U.S. ownership should be increased, and a level of 40 percent was suggested. Commenters largely favored a 40 percent test. As adopted, the MJDS imposes a 40 percent ceiling on ownership of the class of subject securities by U.S. holders.[48] The state securities regulators have expressed a willingness to recognize an increase from 20 percent to 25 percent for purposes of the Uniform Securities Act. Form F–8 has therefore been revised to reflect a 25 percent ceiling on U.S. ownership. The Commission has provided an alternative MJDS registration form (Form F–80) for exchange offers equalling or exceeding the 25 percent ceiling, so that states choosing to review such transactions may do so without reviewing every Form F–8. Form F–80 is identical to Form F–8 except for the use of a 40 percent U.S. ownership ceiling instead of a 25 percent ceiling.[49]

In calculating the U.S. ownership threshold, U.S. affiliates are not excluded as they were under the Reproposal. In measuring the percentage of the class of securities held in the United States, securities convertible into or exchangeable for securities of such class are not included.

Also under the Reproposal, a safe harbor would have afforded third-party bidders commencing an unsolicited exchange offer the benefit of a conclusive presumption, under certain circumstances, that U.S. ownership of the subject class of securities did not equal or exceed the proscribed level.[50] The Commission is retaining that safe harbor substantially as proposed, but extending it to all third-party offers, whether solicited or unsolicited. In addition, because of similar difficulties third parties would encounter, the safe harbor is being extended to the determination of whether the target company is a foreign private issuer. Thus, third-party bidders commencing an exchange offer have the benefit of a conclusive presumption that the target is a foreign private issuer and that U.S. holders hold less than 25 percent (Form F–8) or 40 percent (Form F–80) of the securities, unless: (1) The aggregate trading volume of that class on national securities exchanges in the United States and NASDAQ exceeded the aggregate trading volume of that class on securities exchanges in Canada or the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of the offer (or, if commenced in response to a prior bid, the 12 calendar month period prior to the commencement of the initial offer); [51] (2) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators in Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the securities is not a reporting issuer in any of the above provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold the threshold percentage or more of the subject class of securities; or (3) the offeror has actual knowledge that the level of U.S. ownership as of the operative date equals or exceeds the threshold percentage.

The calculation of the trading volume for purposes of the presumption is based on volume figures published by the exchange(s) on which the security is listed and the published NASDAQ and CDN volume figures. Also, unlike the Reproposal, a third-party bidder availing itself of the safe harbor is not obligated to undertake the burden of searching the public filings of securities authorities in each of the U. S. states, and the Canadian provinces and territories. In addition, a third-party bidder is not required to certify that it has made a reasonable investigation and as a result it believes that less than the threshold amount of the target's securities is held by U. S. holders.

A Canadian offeror making an exchange offer pursuant to the MJDS will file the home country disclosure documents under cover of Form F–8 or F–80 with the Commission. The offer and takeover or issuer bid circular will be distributed by mail in accordance with Canadian law [52] to shareholders in both countries. In the United States an exchange offer cannot commence until a registration statement has become effective.[53] An exchange offer commences under Canadian law, however, immediately upon the mailing to target shareholders of the takeover or issuer bid circular containing the required prospectus disclosure.[54] The Commission has provided, therefore, for immediate effectiveness of filings on Forms F–8 and F–80.

b. Business Combination Registration. Form F–8 and Form F–80 also allow registration in connection with business combinations. When securities are part of the consideration in a business combination, generally an exemption is granted from the prospectus requirements under Canadian law in light of the disclosure provided in the information circular required by Canadian proxy solicitation rules.[55] While, at the time of the Reproposal, Canadian securities regulators had not set forth specific disclosure

[48] "U.S. holders" include any person with a U.S. address on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities. Other than identifying the records to be checked, the definition of U.S. holder is synonymous with the definition of "U.S. resident" in the Reproposal. The "held of record" aspect of the percentage test has been deleted since the Reproposal in favor of identifying the records to be checked for U.S. addresses.

[49] Form F–80 is similarly available for business combinations under the 40 percent U.S. ownership ceiling. See infra section III.B.2.b.

[50] See Reproposal, supra n. 14 at 46295.

[51] The Commission has proposed revisions to Regulation S–K. (17 CFR 229. 10 *et seq.*), Form 20–F (17 CFR 249. 220f) and Rule 12g3–2(b) (17 CFR 240. 12g3–2(b)) to require foreign private issuers using such forms or rule to disclose on at least an annual basis the extent to which their equity securities are held by U.S. holders. Securities Act Release No. 6898 (June 6, 1991). It is anticipated that if these revisions are adopted, the safe harbor will be revised to eliminate the need for third-party bidders commencing an offer to determine the target company's trading volume in the United States and Canada.

[52] See CBCA 198; OSA 97, 99; QSA 128 and Schedule XI.

[53] See section 8 of the Securities Act; rule 467(a) [17 CFR 230. 467(a)].

[54] See OSA 88, 94; QSA 113, 128.

[55] See OSA 71(1) (i) and 85.

requirements for such circular,[56] Canadian securities regulators subsequently have taken action to require prospectus-level disclosure in information circulars used for such business combinations.[57] Thus, the Commission is allowing use of Form F–8 or Form F–80 (or Form F–10 where the requirements are satisfied) to satisfy Securities Act registration requirements in such cases.[58] All information circulars and other disclosure documents used by companies participating in business combinations to solicit securityholders' votes in connection therewith must be filed under cover of Form F–8 or F–80 and delivered to securityholders in the United States.

To be eligible for use of Form F–8 or F–80 in connection with business combinations, each company participating in the business combination must be incorporated or organized in a Canadian jurisdiction and be a foreign private issuer. Each company participating in the business combination, other than the successor registrant, is required to have had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of The Vancouver Stock Exchange for the 12 months immediately prior to filing the Form, and have been reporting with a Canadian securities regulatory authority for the 36 months immediately prior to filing of the Form. Such companies also must be in compliance with such listing and reporting requirements at the time of filing Form F–8 or F–80. Each participating company, other than the successor registrant, also is required to have a public float of at least (CN) $75 million.

In order not to preclude use of the MJDS when a smaller participant is participating in a business combination, Forms F–8 and F–80 do not impose a public float or reporting or listing requirement on any participating company if such requirements are met by other participating companies whose assets and gross revenues from continuing operations, respectively, would contribute at least 80 percent of the successor registrant's total assets and gross revenues from continuing operations, as measured based on pro forma combination of the participating companies' most recently completed fiscal years.

As in the case of exchange offers on Form F–8 or F–80, the securities to be registered in connection with a business combination must be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of securities of the participating company.

Form F–8 or F–80 also may be used for second-step business combinations occurring within twelve months after an exchange offer or cash tender offer. In that case, if the securities offered in the exchange offer or cash tender offer were registered or could have been registered on Form F–8, F–9, F–10 or F–80, or if Schedule 13E–4F or 14D–1F were filed or could have been filed in connection therewith, the issuer will be deemed to satisfy the public float test of Form F–8 or F–80 for the business combination if such test would have been satisfied by such company immediately prior to commencement of the exchange offer or cash tender offer.[59] Otherwise, the reduction in such participating company's public float resulting from the prior offer might prevent the satisfaction of the public float test for purposes of the second-step business combination.

Eligibility for Form F–8 or F–80 in terms of U.S. shareholdings is assessed on the basis of securities of the successor registrant that will be distributed to participants. Form F–8 is available where less than 25 percent of the class of securities of the successor registrant would be held by U. S. holders, as if measured upon completion of the business combination. Form F–80 is available where less than 40 percent of such class of securities would be held by U.S. holders upon completion of the business combination. As is the case with exchange offers, U. S. affiliates are not excluded from the calculation of U.S. shareholdings as they were under the Reproposal. The calculation of U.S. holders is made as of a participant's last fiscal quarter or, if such quarter ended within the last 60 days, as of the participant's preceding quarter.

Registrants participating in business combinations who are ineligible to use Form F–8 or F–80 because, for example, the threshold for securities held by U.S. holders is equalled or exceeded, may register on Form F–10 if participants accounting for at least 80 percent of total assets and gross revenues from continuing operations of the successor registrant meet the Form F–10 eligibility requirements. Form F–10 thus accommodates business combinations as well as exchange offers.[60]

3. Rights Offers (Form F–7)

Form F–7 may be used by Canadian issuers making rights offerings in the United States.[61] To be eligible to use Form F–7, the issuer has to have a class of securities listed on The Toronto Stock Exchange, The Montreal Exchange or the Senior Board of The Vancouver Stock Exchange for the 12 months immediately preceding use of the Form, and be reporting with a Canadian securities regulator for the 36 months immediately preceding use of the Form. The issuer also must be in compliance with requirements arising from such listing and reporting at the time of filing Form F–7. Unlike the Reproposal, requirements that the exercise period of the rights not exceed 90 days and the rights be exercisable immediately upon issuance are not included in Form F–7 as adopted. Also unlike the Reproposal, the 25 percent limitation on the increase in the number of the outstanding securities

[56] Ontario, for example, required the transaction to be described "in sufficient detail to permit security holders to form a reasoned judgment concerning the matter." Such rules referred to prospectus and takeover bid forms for guidance as to materiality. See OSC Form 30, Item 11. See also QSA 50.

[57] O.S.C. Policy No. 5. 1, as amended.

[58] Reliance on the MJDS to satisfy the Securities Act registration obligations in connection with business combinations does not eliminate an issuer's obligation to file a Schedule 13E–3, if such business combination involves a "going private" effect within the meaning of rule 13e–3, or its obligation to satisfy other Exchange Act requirements. See infra sections III.D.–III.E. Also, rule 10b–6 under the Exchange Act continues to apply to an offer and sale of securities pursuant to a business combination "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), 17 CFR 240.10b–6(c)(5). See Securities Exchange Release No. 19565 (March 4, 1983) [48 FR 10628]. See infra section III.E.

[59] The amount of time allowed between the exchange offer and the subsequent business combination has been increased from six months in the Reproposal to twelve months. Also, second-step business combinations following cash tender offers are now contemplated. In addition, the use of the MJDS for a second-step business combination is no longer predicated on use of the MJDS forms for the exchange offer or cash tender offer. If the securities offered in the exchange offer would have been eligible for registration under the MJDS, or if schedule 13E–4F or 14D–1F could have been used, the subsequent business combination may be conducted under the MJDS. Regardless of that change, compliance with the provisions of rule 13e–3 under the Exchange Act may be required in connection with the second-step business combination.

[60] A reconciliation of both historical and pro forma statements to U.S. GAAP, however, is required by Form F–10 if filed prior to July 1, 1993. Form F–10 similarly may be used in connection with second-step business combinations. See supra n. 59.

[61] The securities that may be registered on Form F–7 are those issued upon the exercise of rights. Securities that could have been purchased by existing securityholders by exercise of rights but were not and are then sold to other persons after the exercise period ends are not deemed to be registered under Form F–7. The rights themselves generally are not required to be registered based on a "no-sale" theory. *Cf.* Securities Act Release No. 929 (July 29, 1936) [11 FR 10957]. If the rights are required to be registered, the issuer is permitted to register them on Form F–7.

of the class to be issued upon exercise of the rights has been deleted from the Form F–7 eligibility requirements. Upon reconsideration, the limitation was judged unnecessary for, and in some cases inconsistent with, U.S. investors' interests.

To preclude its use by issuers ineligible to make an MJDS offering to new investors, Form F–7 provides that the rights issued may not be transferable except outside the United States in accordance with Regulation S under the Securities Act.[62] The securities purchased by existing securityholders upon exercise of rights, however, are transferable in the United States.

4. Disclosure Supplementing Home Jurisdiction Requirements

In light of the absence of requirements for such disclosure under Canadian law, information regarding indemnification provisions relating to directors, officers or controlling persons of the registrant is required to be disclosed in Forms F–8, F–80, F–9 and F–10.[63] A statement regarding the Commission's opinion that indemnification against Securities Act liabilities is against public policy and is therefore unenforceable also is required.

5. Application of Securities Act Rules

The Securities Act rules in Regulation C mandating standards for the preparation and form of prospectuses are inapplicable under the MJDS, unless otherwise specified in the MJDS forms.[64] Other Securities Act rules regarding the offer and sale of securities in the United States generally do apply unless the MJDS form specifies otherwise or the rule, by its terms, is inapplicable. For example, U.S. requirements for prospectus delivery [65] apply to MJDS offerings in the United States, as do safe harbor provisions relating to advertisements and other notices regarding MJDS offerings.[66] In addition, publication of recommendations, opinions or other information with respect to a MJDS registrant or its securities is permitted to the extent provided by Securities Act safe harbor rules.[67] Where appropriate, Securities Act rules have been amended to apply to MJDS forms.[68]

C. Exchange Act Registration and Reporting

Canadian issuers that make a registered offering of securities in the United States or have a certain number of shareholders of record resident in the United States and have a threshold amount of assets are subject to registration and reporting requirements under the Exchange Act.[69] Similarly, Canadian issuers listing securities on a national securities exchange or having them quoted on NASDAQ are subject to such Exchange Act requirements.[70] A chart of such reporting obligations and the forms available to Canadians to satisfy them is included as appendix C to this Release.

1. Section 15(d) Obligations

Absent an exemption, section 15(d) of the Exchange Act [71] requires each issuer that has filed a Securities Act registration statement that has become effective to file periodic reports thereafter.[72] While under the Reproposal registration on any of the MJDS Securities Act forms would have resulted in subsequent Exchange Act reporting, the MJDS as adopted provides that securities registered on MJDS Form F–7, F–8 or F–80 are exempt from the section 15(d) requirement to file subsequent reports with the Commission, provided the issuer is furnishing its home country disclosure documents under the rule 12g3–2(b) exemption from the Commission's reporting obligations under section 12(g).[73]

Any section 15(d) reporting obligation resulting solely from registration on MJDS Form F–9 or F–10 (or Forms F–8, F–80 or F–7 where the issuer does not satisfy the Rule 12g3–2(b) condition) may be satisfied by the Canadian issuer filing its home jurisdiction periodic disclosure documents under cover of Commission Forms 40–F and 6–K.[74] Those documents will include Annual Information Forms, audited annual and unaudited interim financial statements and material change reports. Issuers reporting as a result of using Form F–10 (unless they could have registered the securities on Form F–9) also must include a reconciliation of their annual financial statements to U.S. GAAP as required by item 17 of Form 20–F if the Form 40–F is filed prior to July 1, 1993. Forms filed on such date or thereafter will not be subject to such reconciliation requirement, absent future Commission action to the contrary. Further, Canadian issuers that are eligible to use Form F–10 (but not Form F–9), but have registered or choose to register securities on the Commission's non-MJDS Securities Act forms, also may satisfy their reporting obligations by filing their home jurisdiction periodic disclosure documents, together with an item 17 reconciliation if the filing is made prior to July 1, 1993. Similarly, a Canadian issuer eligible to use Form F–9 that has registered or chooses to register Form F–9–eligible securities on non-MJDS forms may file its home jurisdiction periodic disclosure documents on Form 40–F, in which case no reconciliation is required.

All other Canadian issuers must use either Form 20–F and Form 6–K reports or, at their option, the 10–K, 10–Q and 8–K reports to satisfy their Section 15(d) reporting obligations.[75]

2. Stock Exchange and NASDAQ-Related Obligations

Section 13(a) of the Exchange Act requires each issuer that has registered securities under that Act to file periodic

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[62] 17 CFR 230.901–230.904 (including Preliminary Notes). Resales otherwise made in compliance with rule 904 may be executed in, on or through the facilities of The Montreal Exchange, The Toronto Stock Exchange and The Vancouver Stock Exchange, among other markets.

[63] The indemnification disclosure is based on the requirements of Item 510 of Regulation S–K, 17 CFR 229.510. Unlike the Reproposal, disclosure regarding such indemnification provisions is not required in Form F–7 as adopted.

[64] Exceptions to the waiver of rules under Regulation C have been noted in the MJDS forms.

[65] See rule 174, 17 CFR 230.174. See also rule 15c2–8 under the Exchange Act, 17 CFR 240.15c2–8.

[66] See rules 134, 135 and 135A, 17 CFR 230.134, 230.135 and 230.135A.

[67] See rules 138 and 139, 17 CFR 230.138 and 230.139.

[68] See, *e.g.*, revised rules 158 and 175, 17 CFR 230.158 and 230.175. Exchange Act and Trust Indenture Act rules also have been amended to apply to MJDS forms, as appropriate. See, *e.g.*, revised rule 3b–6 under the Exchange Act, 17 CFR 240.3b–6; and revised rule 0–11 under the Trust Indenture Act, 17 CFR 260.0–11.

[69] See sections 12(g), 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78*l*(g), 78m(a), 78*o*(d).

[70] See section 13(a) of the Exchange Act, 15 U.S.C. 78m(a).

[71] 15 U.S.C. 78*o*(d). See also Regulation 15D, 17 CFR 240.15d–1 through 240.15d–21.

[72] 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.

[73] See rule 12h–4, 17 CFR 240.12–4. Rule 12g3–2(b) (17 CFR 240.12g3–2(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 the home regulatory agency, or distribute to their securityholders.

[74] As revised today, rule 12g3–2 provides that a section 15(d) obligation arising out of registration on Form F–7, F–8, F–9, F–10 or F–80 does not prevent continued reliance on the rule with respect to such issuer. See rule 12g3–2(d)(1), 17 CFR 240.12g3–2(d)(1). The filing of Forms 40–F and 6–K will suffice for submissions required by the same issuer under rule 12g3–2(b).

[75] By virtue of revisions adopted today, Form 20–F and Form 6–K are being made available for Exchange Act registration and periodic reporting to all Canadian foreign private issuers. Canadian issuers also may choose to register securities on Form 10 and report on the Forms designed for domestic issuers.

reports.[76] The Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange.[77] Exchange Act registration is also required for securities quoted on NASDAQ.[78] Issuers eligible to use MJDS Form F–10, and issuers eligible to use MJDS Form F–9 that are having Form F–9-eligible securities so listed or quoted, may comply with such reporting obligations by filing their home jurisdiction disclosure documents.[79]

3. Forms 40–F and 6–K

Forms 40–F and 6–K will be available for eligible Canadian issuers that are registering securities under the Exchange Act or satisfying their Exchange Act reporting obligations by filing home jurisdiction disclosure. Form 40–F is used as a wraparound for the filing of home jurisdiction information material to an investment decision that the issuer has made public, filed with a stock exchange or distributed to securityholders.[80] For an issuer registering securities under the Exchange Act, Form 40–F specifically requires the issuer to file that portion of its home jurisdiction documents containing a description of the securities being registered.[81]

Documents filed under Form 40–F to satisfy reporting obligations must be filed with the Commission the same day they are filed with a Canadian securities regulatory authority. Documents required by Form 6–K must be furnished to the Commission promptly after they are made public, filed or distributed as noted above. Disclosure documents filed with the Commission on Form 40–F or 6–K are subject to antifraud liability, but only the documents filed on Form 40–F are subject to section 18 liability.

Documents filed under cover of Form 40–F must be in English. If documents in a foreign language are furnished under Form 6–K, English versions or summaries need only be provided if such documents are distributed directly to securityholders of a class to which a reporting obligation under the Exchange Act relates or if such documents are in the form of a press release.

Regulations 12B, 13A and 15D do not apply to registrants using Form 40–F.[82] Unless specified therein, all other Exchange Act rules apply to Form 40–F. Exchange Act rules regarding fees, amendments and effectiveness of registration statements apply.

D. Tender Offer Regulation Under the MJDS

The Commission also is incorporating into the MJDS certain provisions for compliance with the U.S. regulatory scheme relating to tender offers in connection with cash and exchange offers for Canadian companies. Pursuant to amendments being adopted to the Commission's tender offer rules, regulations and schedules, third-party and issuer tender offer filings in connection with offers made in both jurisdictions for a class of securities of a Canadian issuer may proceed in the United States in accordance with all relevant Canadian federal, provincial and territorial rules and regulations. Such offers must be extended to all holders of the class of securities in the United States and Canada upon terms and conditions not less favorable than those offered to any other holder of the same class of securities, and the transaction itself must be covered by and not exempt from substantive provisions of Canadian law governing the terms and conditions of the offer. In addition, U.S. holders must hold less than 40 percent of the subject securities.

Commenters addressing the tender offer issues in the Proposals focused primarily on the appropriateness of the proposed 20 percent ceiling to be imposed on U.S. record ownership, the method for calculating this percentage ownership, the safe harbor for third-party bidders, and the effect of discretionary exemptive orders granted by Canadian securities regulators. Upon consideration of the comments submitted, the following modifications are being adopted.

The ceiling for U.S. ownership has been raised to 40 percent with respect to compliance with the Williams Act and Commission rules thereunder in connection with cash and exchange offers, which increase was largely endorsed by commenters. As noted, the ceiling on U.S. ownership for registering an exchange offer under the Securities Act on Form F–8 is 25 percent and on Form F–80 is 40 percent. As with Forms F–8 and F–80, the percentage limitation set forth in the MJDS tender offer rules and schedules [83] is calculated by reference to securities held by persons with U.S. addresses in the records of the issuer and other specified records.[84] Like those Forms, U.S. affiliates are not excluded from the calculation of the U.S. ownership ceiling as they would have been under the Reproposal.

The operative date for calculating U.S. ownership for the purpose of determining eligibility for MJDS is the end of the subject company's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the subject company's preceding quarter.[85] The rules, as adopted, provide that the date of the initial bid, in the case of competing bids, is used for determining MJDS eligibility for all subsequent competing bids. Subsequent competing bids are able to look back to the initial commencement date, so long as the initial offer was eligible to use MJDS, regardless of whether the initial offer took advantage of MJDS. In addition, as in Forms F–8 and F–80, third-party bidders whether solicited or unsolicited are able to rely upon a conclusive presumption that less than the threshold percentage of the class of subject securities is held by U.S. holders and that the target is a foreign private issuer, absent published trading volume data, disclosure in public filings or actual knowledge to the contrary.[86]

An important condition to use the MJDS to effect cross-border tender and exchange offers is that the offer be subject to a Canadian regulatory scheme

[76] 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).

[77] Section 12(b), 15 U.S.C. 78*l*(b).

[78] Section 12(g), 15 U.S.C. 78*l*(g). Section 12(g) does not apply to debt securities.

[79] Such issuers also may file their home jurisdiction documents to satisfy any reporting obligation arising from section 12(g) under the Exchange Act, 15 U.S.C. 78*l*(g), as supplemented by rule 12g–1, 17 CFR 240.12g–1. For filings prior to July 1, 1993, Form F–10-eligible issuers that are not having Form F–9 eligible securities listed or quoted are required to reconcile the home jurisdiction annual financial statements provided under Form 40–F, as required by Item 17 of Form 20–F. Form F–9–eligible issuers that are having Form F–9–eligible securities listed or quoted are not required to reconcile such reports. Item 17 requires quantitative reconciliation of net income and material balance sheet items, but other disclosures prescribed by U.S. GAAP and Regulation S–X are not required.

[80] A Canadian issuer using the Form 40–F to register its securities must file information of that type made public, filed or distributed since the beginning of its last full fiscal year. A Canadian issuer using Forms 40–F and 6–K to satisfy its continuous reporting obligations must file its home jurisdiction Annual Information Form, and its home jurisdiction audited annual financial statements and accompanying management's discussion and analysis under cover of Form 40–F and furnish all other material home jurisdiction information under cover of Form 6–K.

[81] See, *e. g.*, OSC Form 12, Items 17–19; OSC Form 13; OSC Form 14; Toronto Stock Exchange Listing Application, Item 5. In contrast, the Reproposal would have required the description of the securities being registered to be made in accordance with Commission item 202 of Regulation S–K under the Securities Act, 17 CFR 229. 202.

[82] See rules 13a–3 (17 CFR 240.13a–3) and 15d–4 (17 CFR 240.15d–4), which clarify that Regulations 13A and 15D are deemed satisfied by an issuer that reports in accordance with Forms 40–F and 6–K.

[83] Rules 14d–1(b), 13e–4(g) and General Instruction I.A. to Schedules 14D–1F and 13E–4F.

[84] See *supra* n. 48.

[85] See Original Proposal *supra* n.11 at 32239.

[86] See *supra* text accompanying n.51.

governing the conduct of tender offers. Accordingly, transactions that are not subject to Canadian tender offer regulation, such as offers for non-convertible debt securities and non-convertible, non-voting preferred stock, would not be eligible for the MJDS. Offers exempted from Canadian tender offer regulation likewise would not qualify. By way of illustration, the Commission noted in the Original Proposal that an exempt takeover or issuer bid conducted on The Toronto Stock Exchange or The Montreal Exchange would be governed by the Williams Act and the rules thereunder, since such a bid would not be regulated by any Canadian federal, provincial or territorial regulatory scheme governing tender offers.[87] The MJDS is available regardless of whether the offering person is eligible for an exemption, so long as it does not take advantage of such eligibility. Therefore, if a bidder chose to make an offer subject to Canadian takeover bid regulation, the transaction would not be ineligible for the MJDS merely because a blanket exemption was otherwise available to the bidder. Furthermore, even if the bidder takes advantage of a blanket exemption in one or more Canadian jurisdictions, the transaction would not be ineligible for the MJDS so long as the offer remains fully subject to the laws or regulations governing takeover bids of Canada or any one of its provinces or territories.

In addition, a limited grant of exemptive relief to a Canadian bidder or issuer from applicable Canadian takeover bid rules, rather than a blanket exemption, will not necessarily preclude a bidder or issuer from proceeding with a tender or exchange offer in the United States under the MJDS. The MJDS will not be available if the Canadian regulators granted relief from Canadian regulatory provisions mandating tender offer protections otherwise called for by the Williams Act and Commission rules such that the transaction would no longer be subject to such protections pursuant to the laws or regulations of Canada or any one of its provinces or territories. Persons seeking to use the MJDS despite the entry of such an exemptive order implicating Williams Act requirements, could seek relief from the Commission which could allow the offer to proceed under the MJDS either conditioned upon compliance with the relevant Williams Act provisions with respect to U.S. holders or unconditionally. All requests for entry of such orders would be resolved on an expedited basis. Exemptive relief by Canadian authorities from Canadian requirements relating to such matters as distribution of offering materials in French, post-bid and pre-bid integration of purchases into the offer, valuation and minority voting requirements in insider bids, and collateral benefits normally would not result in the loss of MJDS eligibility, and therefore normally would not require relief from the Commission. Nevertheless, the Commission should be provided with a copy of all requests for relief from Canadian authorities at the time the request is made and any orders granting such relief should be filed as an exhibit to the Schedule 13E–4F or 14D–1F. If the Commission's staff believes that a particular form of relief would implicate Williams Act protections, and thus in the staff's view would cause the loss of MJDS eligibility, the requesting party and the Canadian regulators would be advised by the staff of its view that an application for relief to the Commission would be necessary before the transaction could proceed under the MJDS. The Commission is adopting amendments to its rules to provide for delegation of this authority to the Division of Corporation Finance and the Division of Market Regulation.[88]

If the request to proceed under the MJDS is not granted, the offer may nevertheless proceed using the MJDS, with respect to the use of Canadian disclosure documents, although the U.S. portion of the offer will have to comply with all or certain of the provisions of the Williams Act, as specified by the order, even though exempted from a comparable provision in Canada.

E. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

Rule 10b–6 generally prohibits a person participating in a securities distribution from, directly or indirectly, bidding for or purchasing, or inducing 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.[89] 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."[90]

Canadian provisions permit participants in transactions contemplated by Forms F–8, F–80, F–9 and F–10 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 provisions permit, in limited circumstances, purchases by an offeror during a third-party bid, or by an issuer during an issuer bid.[91] Such purchases

[87] See Original Proposal *supra* n.11 at n 195 and accompanying text.

[88] Rules 30–1(f) and 30–3(a)(35) [17 CFR 200.30–1(f) and 200. 30–3(a) (35)] (rules delegating authority to Division directors).

[89] During an exchange offer, the offeror'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 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).

[90] Brief of the Securities and Exchange Commission, *Amicus Curiae* at 2, *Texaco Inc.* v. *Pennzoil Co.*, No. C–6432 (Sup. Ct. Tex., July 1987). It should be noted that rule 14e–4 under the Exchange Act (17 CFR 240.14e–4) may apply to tender or exchange offers undertaken pursuant to the MJDS.

[91] See CBCA § 197(f); OSA 93 (3)–(7); QSA 120, 142. However, 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 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 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 §§ 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 (Dec. 24, 1982) (as amended), reprinted in, 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–903.

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.[92]

In connection with the MJDS, the Commission is granting exemptions with respect to rules 10b–6 and 10b–13.[93] The exemptions apply solely to tender and exchange offers made in reliance on rule 13e–4(g) or 14d–1(b). The exemptions permit: (1) With respect to cash tender offers, purchases of the securities that are the subject of the offer and any other security that 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").[94] The exemptions are available to offerors that: (1) Disclose in the Form F–8, F–80, F–9 or F–10, or in Schedules 13E–4F and 14D–1F, or, in the case of a cash tender offer where no filing is required to be made in the United States, in the offering materials disseminated to U. S. securityholders, the possibility of, or the intent to make, purchases of subject securities as permitted by applicable Canadian regulations; and (2) disclose in the United States 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.[95]

The Commission's exemptions with respect to rules 10b–6 and 10b–13 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.[96]

F. Mechanics of the MJDS

1. Offerings of Securities

An issuer using the MJDS will prepare a disclosure document according to Canadian requirements and use that document for securities offerings in the United States, subject to minimal additions set forth in the MJDS forms.[97] Of course, if no Canadian takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared with respect to an offering because an exemption from such requirements is being relied upon by the issuer, the offering is not eligible to be made using MJDS forms regardless of whether the eligibility tests are satisfied.[98] Where an offering on Form F–9 or F–10 is being made only in the United States, however, the MJDS is available so long as the home jurisdiction disclosure document is prepared and filed with the Canadian securities regulator in the review jurisdiction.

Review of the disclosure document will be undertaken by Canadian securities authorities and generally will be that customary in Canada. Thus, except in the unusual case where the Commission's staff has reason to believe there is a problem with the filing or the offering, the documents generally will be given a "no review" status by the Commission. For the most part, since the MJDS Securities Act forms become effective upon filing, any Commission review would be undertaken after effectiveness.

The MJDS forms distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commission. Participating Canadian issuers will provide investors in the United States generally with the same information delivered to investors in Canada. A prospectus used in the United States, however, need not contain any disclosure applicable solely to Canadian offerees or purchasers that is not material to U.S. offerees or purchasers. All the forms and schedules also expressly require that the issuer add to the prospectus or circular legends notifying 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. Information incorporated by reference into the Canadian registration statement or prospectus that is not required to be delivered to securityholders in the issuer's home jurisdiction is not required to be included in the MJDS prospectus, but must be filed with the Commission as an exhibit to the applicable form. Other documents required by home jurisdiction law to be made publicly available in connection with the transaction, or required to be filed with the Canadian securities regulator concurrently with the Canadian prospectus, also must be filed with the Commission as exhibits to the registration statement or schedule. The rules require the issuer to provide such information to the investor upon request. Such information also will be available in the public files of the Commission. Documents previously filed with the Commission or furnished by the issuer to the Commission pursuant to the rule 12g3–2(b) exemption may be incorporated by reference and need not be filed again.[99] Experts' consents also

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[92] OSA § 93(3) and Reg. § 169; QSA § 142. 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. See QSA 142; OSA Reg. 169.

[93] See Exchange Act Release No. 29355 (June 21, 1991).

[94] All exemptions 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*, 445 F.2d 391 (2d Cir. 1977); *Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961).

[95] Canadian regulatory officials and broker-dealers have advised the staff that it would not be a significant burden to provide this additional disclosure.

[96] In connection with offerings of certain Canadian issuers, the Commission intends to issue exemptions from rules 10b–6, 10b–7, and 10b–8 to permit "passive market making" on The Toronto Stock Exchange and The Montreal Exchange, and to provide that purchases by Canadian issuers and the non-dealer affiliates of distribution participants be regulated by Canadian rules.

[97] Like other Securities Act registration statements, those filed under cover of MJDS forms are subject to the requirement of rule 408 under the Securities Act (17 CFR 230.408) to include other material information necessary to make the required statements not misleading in light of the circumstances under which they are made.

[98] The MJDS may be used in the case of business combinations exempt from registration requirements in Canada since the information circulars must be prepared with prospectus level disclosure. The Commission understands that offerings in connection with dividend reinvestment plans are exempt from the prospectus requirements under Canadian law. Securities offered in such circumstances will not qualify for registration under the MJDS. Under revisions to Form F–3 being adopted, however, such offerings will be eligible for registration on Form F–3 by eligible Canadian issuers reporting on MJDS Forms 40–F and 6–K. The Commission also has proposed revisions to broaden Form F–3 to allow issuers not meeting the public float requirement therein to use such Form in connection with dividend reinvestment plans and rights offerings. See Securities Act Release No. 6896 (June 5, 1991).

[99] See revised rule 24 of the Commission's Rules of Practice (17 CFR 201.24).

must be filed with the Commission as a part of the MJDS registration statement and are 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.[100]

2. Incorporation by Reference

Information filed under cover of Form 40–F or furnished on Form 6–K in connection with the MJDS may be incorporated by reference into certain Securities Act registration statements. Forms F–2, F–3, F–4 and S–8 allow such incorporation by reference on the same basis that Form 20–F information may be so incorporated, provided the registrant is eligible to use Form F–10 or, if the securities being registered on Form F–2, F–3, F–4 or S–8 are Form F–9-eligible securities, the registrant is eligible to use Form F–9. In addition, Forms F–2, F–3 and F–4 allow incorporation of Forms 10–K, 10–Q and 8–K information by Canadian issuers who have been reporting under such forms. To maintain the integrity of the issuer distinctions made in the MJDS registration forms, incorporation by reference of Form 40–F information is limited to issuers eligible to use Form F–10, or Form F–9 (with regard to Form F–9-eligible securities).

3. Form F–X

The Securities Act registration forms (other than Form F–7) and Williams Act schedules (if filed by non-U.S. persons) must be accompanied upon filing by a Form F–X, which includes a consent to service of process and appointment of a U.S. person as agent for process, and a consent to service of an administrative subpoena and an undertaking to assist the Commission in responding to inquiries made by the Commission staff. In addition, Form F–X is required to be filed by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.[101] A Canadian issuer registering securities on Form 40–F must file a Form F–X with its Form 40–F. Also, issuers that have not filed a Form F–X with the Commission previously in connection with securities to which a reporting obligation relates, are required to file one at the time they file periodic reports on Form 40–F.

Form F–X has been revised from the version under the Reproposal to include a reference to a specific period during which a successor agent for service of process must be appointed if the agent resigns, is dismissed or is unable to continue serving as such. In the case of issuers filing Form F–X in connection with Form F–9, F–10 or 40–F, or Schedules 13E–4F, 14D–1F or 14D–9F such requirement extends for six years following the date the issuer of the securities to which such Form or Schedules relates ceases filing reports under the Exchange Act. Because issuers using Form F–8 or F–80 will not necessarily be reporting under the Exchange Act, the obligation to appoint successor agents is limited to a period of six years following the effective date of the latest amendment to such Form F–8 or F–80.[102] For trustees filing Form F–X, the obligation continues so long as any of the securities subject to the indenture remain outstanding. Each form and schedule being adopted contains a requirement that the Commission be advised promptly by amendment to Form F–X of any change to the name or address of an agent.

4. Time of Filing Securities Act Forms

Although the MJDS Securities Act registration forms need not be filed with the Commission on the same day they are filed with the Canadian securities regulators, offers may not be made in the United States until such forms are filed. Moreover, sales may not be made in the United States until such forms have been declared effective.[103] The Commission understands that in certain circumstances Canadian law allows underwriters to solicit expressions of interest from potential investors within two business days prior to filing a preliminary prospectus with Canadian securities regulators. Such "bought deals" could continue to be conducted in Canada in connection with the MJDS so long as no solicitations of interest are made in the United States prior to the filing of the applicable Securities Act registration statement with the Commission.

5. Effective Date

Under the Reproposal, the effective date for registration of securities on Forms F–7 and F–8 (and for securities offered in an exchange offer or business combination on Form F–9 or F–10) would have been the date of written or oral notification of the Commission by the registrant or the applicable Canadian securities regulators that the securities legally may be sold in Ontario and Quebec (or, if the securities are being offered in only one of such provinces, that such securities legally may be sold in Ontario or Quebec). Forms F–9 and F–10 for offerings not in connection with exchange offers or business combinations would have become effective upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulator that the securities legally may be sold in the designated principal jurisdiction.

Under the MJDS as adopted, Forms F–7, F–8 and F–80 (and any amendments thereto) will become effective upon filing.[104] Forms F–9 and F–10 (and any amendments thereto) also will become effective upon filing, if they relate to offerings of securities being made contemporaneously in Canada and the United States, and they do not include a designation on the cover page that they are preliminary materials.[105] In the case of a U. S.-only offering on Form F–9 or Form F–10, the registration statement (and any amendments thereto) will be made effective on the date specified by the registrant, if such date is more than seven days after the date filed with the Commission. The seven-day period will provide adequate time for Canadian authorities reviewing such documents to advise the Commission of any regulatory concerns and will minimize the potential for the MJDS to encourage Canadian issuers to forego registration in Canada. Such seven-day period need not elapse prior to effectiveness with the Commission, however, if the Canadian securities regulator in the review jurisdiction issues a receipt or notification of clearance with respect to the registration statement (or amendment) prior thereto. In that case, the effective date will be as soon as practicable after written notification of the Commission that such receipt or clearance was issued.[106] Either the issuer or the applicable Canadian securities regulator may make such written notification.

6. Shelf Offerings and Post-Effective Pricing Procedures

Since the date of the Reproposal, Canadian regulatory authorities have adopted rules for shelf prospectus offerings and for pricing of offerings after the final prospectus is

[100] See Securities Act Rules 436–439 (17 CFR 230.436–230.439).

[101] See *infra* section III.H. See also rule 10a–5 under the Trust Indenture Act.

[102] If no amendments to such Forms are filed, the six-year period would be measured from the effective date of the original Form.

[103] See Section 5 of the Securities Act, 15 U.S.C. 77e.

[104] See rule 467(a).

[105] See rule 467(a).

[106] See rule 467(b). Written notification may be made by mailing it to the Office of International Corporate Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

receipted.[107] Canadian MJDS issuers may rely only upon such home jurisdiction shelf prospectus offering and pricing procedures in connection with MJDS offerings. MJDS registration statements used in connection with such pricing procedures therefore will become effective with the Commission prior to pricing to the same extent they do in Canada. Supplements to the home jurisdiction disclosure documents in connection therewith will be filed with the Commission within one business day after they are filed with the relevant Canadian jurisdiction, but will not be deemed amendments to the Commission registration statement. Similarly, under the Canadian MJDS for U. S. issuers, the Commission's shelf and pricing procedures will apply.[108] In connection therewith, U. S. issuers must file a supplement with the Commission whenever a tranche is not being sold in the United States under the Canadian MJDS.[109]

G. Exclusion of Investment Companies

The MJDS forms are not available to Canadian registrants that are investment companies, as defined in section 3 of the Investment Company Act of 1940, if they are registered or required to be registered under the Investment Company Act. In the case of exchange offers, the issuer of the subject securities also may not fall within that category. Canadian issuers within the definition of "investment company" but exempted from registration either in reliance on an individual exemptive order or on an exemptive rule may take advantage of the MJDS. [110]

The Commission has published for comment amendments to Rule 6c–9 under the Investment Company Act.[111] Rule 6c–9 currently provides an exemption from the registration provisions of that Act for foreign banks offering their debt securities and non-voting preferred stock within the United States, either directly or through finance subsidiaries. The proposed amendments would expand the exemption to foreign banks offering equity securities and foreign insurance companies and finance subsidiaries of foreign banks and insurance companies offering their securities. Canadian trust companies and loan companies would be specifically included within the definition of "foreign bank." The comment period relating to such proposal has expired and the Commission is considering what further action may be appropriate.

H. Trust Indenture Act

The Proposals included rules and forms designed to provide exemptions under Section 304(d) of the Trust Indenture Act [112] from the required appointment of a U. S. trustee under a qualified indenture.[113] Proposed rules and forms would have allowed a Canadian institutional trustee to act as sole trustee under a qualified indenture if the securities under the indenture were eligible for registration on Form F–7, F–8, F–9 or F–10, and if the indenture provided for a Canadian institutional trustee authorized by law to exercise trust powers and subject to supervision or examination by governmental authority.[114] The Trust Indenture Reform Act of 1990 (the "Reform Act"), which has been enacted by Congress, eliminates the need for such proposed rules and forms under the Trust Indenture Act.

In accordance with the expanded authority granted to the Commission by the Reform Act amendments to the Trust Indenture Act, the Commission recently proposed for comment two rules to facilitate multijurisdictional and cross-border offerings of debt securities by Canadian issuers.[115] As proposed, rule 10a–5 under section 310(a)(1) [116] of the Trust Indenture Act would have permitted persons authorized to exercise corporate trust powers and subject to federal supervision or examination under the Trust Companies Act (Canada),[117] or the Canada Deposit Insurance Corporation Act [118] to act as sole indenture trustee for offerings under the MJDS. As proposed, rule 4d–9 under section 304(d) [119] of the Trust Indenture Act would have provided an exemption for trust indentures subject to the Canada Business Corporations Act [120] or the Business Corporations Act, 1982 (Ontario) [121] from the operation of paragraphs (a)(3) and (a)(4) of section 310,[122] sections 310(b) through 316(a),[123] and sections 316(c) through 318(a) [124] of the Trust Indenture Act for offerings of debt securities made under the MJDS.

The Commission is adopting rule 10a–5 as proposed with one modification. Although British Columbia authorities have advised that legislative action is contemplated that would enable United States trustees to act as sole indenture trustees for offerings made in British Columbia, British Columbia law [125] presently would not permit a U.S. trustee to act as sole trustee for such offerings.[126] Accordingly, in view of the residency requirements for trustees under indentures subject to British Columbia law, rule 10a–5 as adopted would not permit appointment of a trust company incorporated or continued and regulated as a trust company under British Columbia law. In addition, the rule as adopted will preclude the appointment of Canadian trustees as sole trustees under trust indentures of obligors incorporated or continued under the Company Act that are to be used for MJDS offerings in the United States.

The Commission is adopting rule 4d–9 as proposed with two modifications. Canadian authorities have advised that the trust indentures of banks issuing debentures are subject to the requirements of the Bank Act.[127] Upon examination of the provisions of the Bank Act applicable to indenture securities and indenture trustees, the Commission has determined that the Bank Act, which is similar to the CBCA, offers investor protection that is comparable to that provided by the Trust Indenture Act. Accordingly, rule 4d–9 as adopted also provides an exemption for trust indentures of obligors that are subject to the Bank Act.

As previously noted, the Company Act does not include exemptive authority in respect of trust indentures prepared in accordance with regulations governing trust indentures in other

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[107] See National Policy Statement No. 44, 14 O.S.C.B. 1844 (May 3, 1991).

[108] See rules 415 and 430A, 17 CFR 230. 415 and 230. 430A.

[109] See revised rule 424, 17 CFR 230. 424.

[110] 15 U.S.C. 80a–3.

[111] See Investment Company Act Release No. 17682 (Aug. 17, 1990) (55 FR 34569).

[112] 15 U. S. C. 77ddd(d).

[113] Section 310(a) (1); 15 U. S. C. 77jjj(a) (1).

[114] See proposed rules 4d–1 to 4d–8 and proposed Form T–5.

[115] Securities Act Release No. 6889 (Mar. 22, 1991) (56 FR 12679) ("Trust Indenture Proposing Release"). Three comment letters on such proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[116] 15 U.S.C. 77jjj(a)(1).

[117] Trust Companies Act (Canada), R.S.C. 1985.

[118] Canada Deposit Insurance Corporation Act, R.S.C. 1985.

[119] 15 U.S.C. 77ddd(d).

[120] Canada Business Corporations Act, R.S.C. 1985 sections 82–93 ("CBCA").

[121] Business Corporations Act, 1982 (Ontario), S.O. 1982 46–52.

[122] 15 U.S.C. 77jjj(a)(3) and (a)(4).

[123] 15 U.S.C. 77jjj(b)–77ppp(a).

[124] 15 U.S.C. 77ppp(c)–77rrr(a).

[125] Company Act, R.S.B.C. 1979, c. 59 ("Company Act").

[126] Trust Indenture Proposing Release at 15 (56 FR 12682).

[127] The Bank Act, R.S.C. 1985, c. B–1 sections 133–144.

jurisdictions.[128] Thus, a United States obligor making an offering in British Columbia would be precluded from making the offering with an indenture qualified only under the Trust Indenture Act. While British Columbia authorities have advised that legislative changes will be sought in order to exempt the trust indentures of United States obligors that comply with the Trust Indenture Act from the requirements of the Company Act, it is unclear when such changes will be effected. Under the circumstances, the rule has been revised to exclude its availability for offerings made by obligors incorporated or continued under the Company Act. British Columbia obligors making offerings of debt securities in the United States would be required to do so pursuant to an indenture that is qualified under the Trust Indenture Act, including the requirement for a United States institutional trustee.

Under new rules 4d–7 and 10a–5, offerings of debt securities under the MJDS would be made by filing the MJDS registration statement, the Canadian trust indenture, and Form F–X with the Commission. The Canadian trustee would not be required to file a Form T–1 in respect of its indenture trusteeship.

I. Liability

Canadian issuers filing documents with the Commission under the MJDS are subject to civil liability and antifraud provisions of the U.S. securities laws.[129] In addition, MJDS registration statements are subject to the authority of the Commission to suspend their effectiveness.[130]

Commenters have expressed concern that an offering document prepared under applicable Canadian rules in accordance with MJDS forms will be considered misleading solely because information required by other existing Commission forms is omitted. By adopting the MJDS, the Commission in essence is adopting as its own requirements the disclosure requirements of Canadian forms. The effect is the same as if the Commission had set forth each Canadian requirement within the MJDS forms. Moreover, different disclosure is required under Commission registration and reporting forms available to different categories of issuers under present Commission practice. Separate sets of forms for foreign and U.S. issuers have long existed under the Securities Act and the Exchange Act. Accordingly, good faith compliance with the disclosure requirements of the home jurisdiction, as construed by Canadian regulatory authorities, will constitute compliance with the applicable U.S. federal securities disclosure requirements, even if such compliance results in the omission of information which might otherwise have been required as a line item in registration statements filed by U.S. issuers on the Commission's other registration forms.

Further, violation of a home jurisdiction disclosure requirement with respect to an MJDS document will not automatically disqualify the issuer from use of the MJDS with respect to that transaction or report. Instead, the issuer will have violated both a home jurisdiction requirement and an identical Commission disclosure requirement with respect to that document.

J. The Canadian Multijurisdictional Disclosure System

The Canadian MJDS for U.S. issuers is largely parallel in scope to the MJDS for Canadian issuers being adopted by the Commission. Like the MJDS for Canadian issuers, securities registration for rights offerings, exchange offers, business combinations [131] and offerings of investment grade securities, among others, may be made by U.S. issuers under the Canadian MJDS. Under the MJDS as it will operate in Canada, U.S. issuers are able to make public offerings of securities in all provinces and territories of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure will be updated in accordance with U.S. requirements, and U.S. documents will be used to comply with continuous reporting requirements. U.S. issuers making shelf offerings must comply with U.S. shelf requirements. Tender offers for securities of U.S. issuers meeting eligibility criteria similar to those set forth in this release will be deemed to comply with applicable Canadian regulations if they are conducted in accordance with the provisions of the Williams Act. In addition, tender offers for securities of U.S. issuers with 20 percent or more Canadian holders must comply with certain Canadian substantive rules applicable to integration of pre-bid purchases with the offer and to valuation requirements in the case of issuer and insider bids.

The Canadian MJDS for U.S. issuers will be implemented in Canada through publication of a national policy statement by the Canadian Securities Administrators ("CSA"), together with the issuance of blanket orders and rulings by the securities regulatory authority of each Canadian province and territory. National Policy Statement No. 45, which sets out the rules governing the use of the Canadian MJDS, is attached as appendix D to this release and will become effective on the same date as the MJDS set forth in this release.[132]

K. Monitoring Efforts in Connection With the MJDS

The CSA has considered the potential impact that the MJDS may have on the Canadian capital markets. The CSA believes the MJDS will benefit the Canadian capital markets.

However, there is a Canadian concern that the U.S. Glass-Steagall Act puts bank-owned dealers at a disadvantage in competing for underwriting assignments when Canadian issuers use the MJDS to finance in the United States. As a result of the Glass-Steagall Act, bank-owned dealers currently are subject to various restrictions on their U.S. underwriting activities, including, most importantly, a limit on the dollar volume of U.S. underwritings. The bank-owned dealers are particularly concerned about the effect the MJDS may have on their equity underwriting business.

Given the importance to the CSA of having a strong dealer community knowledgeable of and committed to the Canadian capital markets, the CSA believes the MJDS should include a "safety valve" that is available if the MJDS does prove to harm the Canadian dealer community substantially. The CSA will monitor the effect of the MJDS and obtain input from Canadian dealers and otherwise monitor the effects of the MJDS on the Canadian dealer community. In addition, the securities regulators in Canada will, if appropriate, hold hearings after an initial period of not more than two years following the

[128] Trust Indenture Proposing Release at 28 (56 FR 12684).

[129] Sections 11, 12(2) and 17(a) of the Securities Act; sections 9, 10(b), 14(e) and 18 of the Exchange Act, and rules 10b–5, 13e–4(b)(1) and 14e–3 under such Act. In essence, the Commission is adopting the disclosure provisions of the Canadian forms, and omission of information otherwise generally included in Commission forms will not violate U.S. disclosure requirements. However, an antifraud action could be brought alleging that the document was misleading because information had been omitted.

[130] See section 8 of the Securities Act (15 U.S.C. 77h).

[131] Business combinations involving U.S. issuers that qualify as "significant asset transactions" under Canadian law, however, may be subject to additional Canadian substantive rules.

[132] Copies of such policy statement also will be made available in Canada and at the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549.

implementation of the MJDS to review the MJDS, including its impact on bank-owned dealers. If the hearings demonstrate that the MJDS has had and will continue to have a material adverse effect on the Canadian dealer community, the CSA and the Commission will commence rulemaking proceedings to seek comment on such changes to the MJDS as are needed to alleviate such adverse effect on the dealers and to ensure that the MJDS achieves its policy goals.

IV. Modifications to the Current Registration and Reporting System for all Canadian Issuers

As noted in the Reproposal, while non-Canadian foreign private issuers have been provided a special registration and reporting system under the Securities Act and Exchange Act,[133] certain Canadian foreign private issuers have been required to use the registration and reporting forms applicable to U.S. companies. Such treatment reflected the inter-relationship of U.S. and Canadian capital markets and the geographical proximity of the two countries. The Commission has reevaluated the policy of distinguishing Canadian issuers from other foreign issuers.[134]

Consequently, pursuant to revisions being adopted,[135] any Canadian foreign private issuer may use Form 20–F as a registration statement or as an annual report under the Exchange Act.[136]

[133] Forms 20–F and 6–K under the Exchange Act, together with Forms F–1, F–2, F–3 and F–4 under the Securities Act, constitute the basic framework of the Commission's registration and reporting system for foreign companies.

[134] See, *e. g.*, Securities Act Release No. 6779, (June 10, 1988) (53 FR 22661, 22665 n. 64) (Regulation S initial proposing release) ; Securities Act Release No. 6863, (May 2, 1990) (55 FR 18306, 18308 n. 21) (Regulation S adopting release).

[135] The revisions reflecting the removal of restrictions on Canadian issuers have been made under the Exchange Act and the Securities Act, including Regulations S–X and S–K. See rules 3a12–3 (17 CFR 240. 3a12–3), 12g–3 (17 CFR 240. 12g–3), 13a–10 (17 CFR 240. 13a–10), 13a–16 (17 CFR 240. 13a–16), 15d–5 (17 CFR 240. 15d–5), 15d–10 (17 CFR 240. 15d–10), and 15d–16 (17 CFR 240. 15d–16) under the Exchange Act; rule 502 (17 CFR 230. 502) and Forms S–4 (17 CFR 239. 25), S–8 (17 CFR 239. 16b), S–11 (17 CFR 239. 18), F–1 (17 CFR 239. 31), F–2 (17 CFR 239. 32), F–3 (17 CFR 239. 33), and F–4 (17 CFR 239. 34) under the Securities Act; rules 3–01 (17 CFR 210. 3–01), 3–02 (17 CFR 210. 3–02), 3–12 (17 CFR 210. 3–12), and 3–19 (17 CFR 210. 3–19) of Regulation S–X; and Items 302 (17 CFR 229. 302), 402 (17 CFR 229. 402), 404 (17 CFR 229. 404) and 601 (17 CFR 229. 601) of Regulation S–K.

[136] See 17 CFR 249. 220f. Form 6–K is now available for other periodic reports by such issuers. Canadian foreign private issuers are also eligible to use the Securities Act registration forms designed for foreign issuers.[137] Thus, Canadian issuers have the same access to Commission forms as other foreign issuers.[138]

The adopted revisions also affect the application of the Commission's proxy rules and share ownership reporting requirements and short–swing profit recapture rules to Canadian issuers. As revised, rule 3a12–3 under the Exchange Act [139] exempts foreign private issuers, including Canadians, from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act.[140]

Despite the revisions being adopted, Canadian foreign private issuers continue to be eligible to use forms prescribed for U.S. companies, if they so elect. A Canadian foreign private issuer who chooses to report or register on forms designed for U.S. companies does not thereby become ineligible to rely on the exemption from the Commission's proxy, share ownership and short-swing profit provisions noted above. While Canadian issuers using Form 10–K are accustomed to satisfying certain disclosure item requirements by incorporating sections of their proxy statements filed with the Commission, Canadian issuers relying on the exemption will be unable to do so. In that case, such 10–K item requirements must be satisfied by directly supplying the information within the Form.[141]

V. Transition From One Registration and Reporting System to Another

Since revisions being adopted will allow certain Canadian issuers to register and report on forms for which they were previously ineligible, it is to be expected that Canadian issuers will be switching from the integrated disclosure system designed for U.S. companies to the integrated disclosure system designed for foreign companies. In addition, Canadian foreign private issuers that have been filing their proxy materials can be expected to stop doing so in reliance upon the rule 3a12–3 exemption. Similarly, persons who have been filing reports under section 16 with regard to their ownership of securities of certain Canadian issuers will also be able to discontinue doing so where the securities will be exempt from that section by virtue of that rule.

Although none of the new forms or rules described in this Release may be relied upon prior to the effective date, commenters on the Proposals raised questions regarding their use after the effective date. Persons wishing to make the transition from the existing rules and forms to the adopted rules and forms should abide by the following procedures. First, any Canadian issuer that currently is filing annual reports under the Exchange Act on Form 10–K but becomes eligible to use Forms 20–F or 40–F may use the latter forms for any fiscal year that ends after the effective date of this Release. If such an issuer completes its fiscal year prior to the effective date, but its annual report on Form 10–K would be due on or after the effective date, that issuer may use Form 10–K, 20–F or 40–F but must comply with the due date applicable to the Form chosen. If such an issuer completes its fiscal year and its Form 10–K is due before the effective date, it should file such Form 10–K.

With respect to quarterly reports by a Form 10–K filer, a Canadian issuer switching to the 20–F or 40–F system of reporting need only continue filing reports on Form 10–Q for those quarters completed prior to the effective date of this Release if the due date for such 10–Q is also before the effective date. When the due date for a 10–Q is on or after the effective date, quarterly results announced by Canadian issuers for quarters ending before then may, however, have to be provided under cover of Form 6–K.

Canadian issuers are not expected to monitor on a continuous basis whether or not they continue to be eligible to use a particular system of Exchange Act forms for reporting. An issuer who is eligible to file a Form 40–F at the end of a fiscal year will be presumed to be eligible to use it at the date of filing and to be eligible to use Form 6–K in connection therewith until the end of its next fiscal year.

With respect to proxy requirements, no Canadian issuer newly eligible for the exemption provided by rule 3a12–3 need file any proxy material pursuant to section 14 on or after the effective date specified in this Release. Issuers who have filed proxy materials with the Commission prior to the effective date

[137] Eligibility of Canadian issuers to use Form S–18 or rely upon Regulation A, however, is not affected by the revisions adopted today.

[138] Canadian issuers who do not meet the definition of "foreign private issuer" under rule 405 will be required, along with other foreign issuers unable to meet such definition, to register and report on forms designed for domestic issuers. In connection therewith, Forms S–2 and S–3 have been revised in this Release to clarify that such "non-foreign private issuers" may use them. See revised Instruction I.E. of Form S–2 and revised Instruction I.A.5. of Form S–3.

[139] 17 CFR 240. 3a12–3.

[140] 15 U.S.C. 78n(a), 78n(b), 78n(c), 78n(f) and 78p. Where the underlying security is exempt from section 16 pursuant to rule 3a12–3, any derivative security relating thereto is similarly exempt.

[141] See Form 10–K, revised General Instruction G.(3).

but have not begun their proxy solicitations prior thereto may choose to conduct such solicitation pursuant to Canadian law rather than pursuant to section 14.

Persons ceasing to be required to report under section 16 with respect to a class of securities because of the adoption of the revised rule 3a12–3 exemption should file no later than July 10, 1991 a Form 4 disclosing all reportable transactions taking place prior to the effective date that have not been reported previously.[142] Otherwise, those persons ceasing to have to report due to the exemption being adopted will have no reporting obligations on or after the effective date.

Finally, Canadian issuers that have filed registration statements under the Securities Act on Commission forms but become eligible for MJDS forms following the effective date of this Release may by amendment transform those registration statements from one form to another.[143] For effective registration statements, the issuer should file a post-effective amendment with home jurisdiction disclosure using the MJDS form for which it is newly eligible and clearly identify on the cover thereof that by filing such an amendment it is switching from the previously filed form to the MJDS form. For registration statements that have not become effective, a pre-effective amendment of the same nature should be filed.[144]

VI. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to state securities laws (including the District of Columbia and Puerto Rico) of those jurisdictions where offers and sales are made. Generally, those laws require registration of securities offered to persons in the state. In most jurisdictions, the registration statement filed with the Commission also will 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.

State laws provide several exemptions from registration provisions; the two existing exemptions most relevant to the MJDS are for sales to existing securityholders of the issuer, including rights offerings, and for securities traded in specified marketplaces. The former exemption is for sales to existing securityholders (including holders of convertible securities or certain warrants) where no commission or other remuneration (other than a standby commission) is paid for solicitation of any securityholders in the state. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges or quoted on the NASDAQ National Market System, and in some states on specified regional exchanges. Securities of the same issuer which are senior to securities listed or quoted on an exempt marketplace generally are also exempt.

The specific requirements for offering and selling securities in any state are governed by that jurisdiction's statutes, rules and policies. Nevertheless, the North American Securities Administrators Association ("NASAA"), which represents all state securities regulators as well as Canadian provincial regulators and the securities authorities of Mexico, proposes uniform guidelines and procedures which are frequently adopted by many of its member states. 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." NASAA also passed a resolution on September 14, 1989 endorsing the MJDS as originally proposed. The NASAA resolution called upon its membership to take any action necessary to accommodate MJDS offerings within state securities laws. NASAA also formed a special task force to work with the Commission and Canadian regulators to determine what accommodations would be appropriate at the state level.

NASAA thereafter conducted a survey of securities administrators in all states, Puerto Rico and the District of Columbia to gather information regarding how such administrators planned to accommodate MJDS offerings in their jurisdictions and the number of state exemptions from registration that may be available to MJDS issuers.[145] Based upon the information obtained from the survey, on August 30, 1990 NASAA adopted four Model Rules to the Uniform Securities Act (1956) and recommended their adoption, where necessary, to the membership. The Model Rules provide, *inter alia*, for: (a) Harmonization of state review periods with Canadian seven-day review periods; (b) acceptance of MJDS Form F–7 in lieu of any state form that may be required to claim an exemption from registration for a rights offering to existing security holders; (c) acceptance of financial information presented in the registration statement in conformity with Canadian generally accepted accounting principles to the extent permitted under the MJDS; and (d) an exemption from registration for secondary trading of securities which are the subject of an MJDS offering and for which a registration statement on Form F–8, F–9 or F–10 has become effective with the Commission. Because Form F–80 was not intended to be part of the Model Rules, some states may not incorporate Form F–80 into their state laws.

Some states already have adopted those rules or similar measures necessary to produce such results. It is anticipated by NASAA that similar action will be taken by substantially all states within the immediate future. Some states are required by their administrative procedures acts to wait for Commission action before formally adopting the changes.

VII. Cost-Benefit Analysis

The Commission is not aware of any additional costs that will result from the MJDS, but as eligible issuers will be able to avoid expenses associated with the preparation of more than one disclosure document, benefits are expected to result for such issuers. With respect to the revisions to existing rules and forms to treat Canadian foreign private issuers like all other foreign private issuers, additional costs are also not anticipated. Since use of the foreign integrated disclosure system will be voluntary for Canadian issuers currently using Commission forms, the costs of converting from one system to the other are not mandated. In fact, in light of the expansion of the exemption from the proxy rules and the operation of section 16, some benefit can be expected to result. A few Canadian issuers commenting on the Reproposal stated that they would expect to experience

[142] Persons makeing such filing should check the exit box on Form 4. No Form 5 need be filed after the effective date by persons ceasing to be required to report due to adoption of the revised rule 3a12–3 exemption.

[143] See rule 401 of Regulation S–K, 17 CFR 230.401.

[144] A Canadian issuer that reports under the Exchange Act solely because of its Securities Act registration also will be eligible to change its Exchange Act reports if, by virtue of switching its Securities Act form as described above to an MJDS form, it thereafter becomes eligible to use another Exchange Act reporting system.

[145] Results of the survey may be obtained from NASAA at suite 750, 555 New Jersey Avenue NW., Washington, DC 20006.

cost savings if the reproposed system were adopted. U.S. issuers are unaffected by such changes.

With respect to the new rules under the Trust Indenture Act, the benefit to designated Canadian obligors and Canadian trustees (the only entities eligible for exemption under the rules) of permitting appointment of Canadian trustees for offerings made in the United States by Canadian obligors, and exempting trust indentures of such obligors from the operation of specified provisions of the Trust Indenture Act, greatly outweighs any burden. Any impact on such entities is expected to be minimal. The rules also will benefit public securityholders by facilitating the expansion of investment opportunities for U.S. citizens by removing barriers to public issuances of debt securities by Canadian registrants in the United States.

VIII. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the adoption of the MJDS and the revisions to the registration and reporting procedures for Canadian issuers will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

IX. Effective Date

The MJDS shall be effective on July 1, 1991, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(1) and (3). It is necessary for the MJDS to become effective on July 1, 1991 in order to coordinate the effectiveness with the MJDS's counterpart being adopted by Canadian provinces and territories on that date.

X. Table of Contents of Rules, Forms and Schedules

1. 17 CFR part 200—Authority
   Rule 30–1(f) of Rules on Delegating Authority to Division Directors
   Rule 30–3(a)(35) of Rules on Delegating Authority to Division Directors
2. 17 CFR part 201—Authority
   Rule 24
3. 17 CFR part 210—Authority
   Rules 3–01, 3–02, 3–12 and 3–19 of Regulation S–X
4. 17 CFR part 229—Authority
   Items 302, 402, 404 and 601 of Regulation S–K

Securities Act

5. 17 CFR part 230—Authority
6. Rule 158—Definitions for Section 11(a)
7. Rule 175—Liability for Certain Statements by Issuers
8. Rule 424—Filing of Prospectuses, Number of Copies
9. Rule 467—Effectiveness of Registration Statements and Amendments thereto on Forms F–7, F–8, F–9 and F–10
10. Rule 473—Delaying Amendments
11. Rule 502—General Conditions to be Met
12. 17 CFR part 239—Authority
13. Form S–2—General Instruction I.E.
14. Form S–3—General Instruction I.A.5.
15. Form S–4—Instruction F
16. Form S–8—General Instructions C, G and Items 3, 9
17. Form S–11—General Instruction E
18. Form F–1—General Instruction I.A.
19. Form F–2—General Instructions I.A., I.D., I.E. and I.G. and Items 11 and 12 and Instructions
20. Form F–3—General Instructions I.A.1., I.A.6., I.B.1. and I.B.3. and Items 11 and 12
21. Form F–4—General Instructions A.1. and C.1. and Items 10, 11, 12, 13, and 17
22. Description of New Forms:
    Form F–7—Registration Statement
    Form F–8—Registration Statement
    Form F–9—Registration Statement
    Form F–10—Registration Statement
    Form F–80—Registration Statement
    Form F–X—Appointment of Agent

Exchange Act

23. 17 CFR part 240—Authority
24. Rule 3a12–3—Exemptions from Sections 14(a), 14(b), 14(c) and 14(f) and Section 16
25. Rule 3b–6—Liability for Certain Statements by Issuers
26. Rule 12g–3—Registration of Securities of Successor Issuers
27. Rule 12g3–2—Exemption for ADRs and Certain Foreign Securities
28. Rule 12h–4—Exemption from Duty to File Reports Under Section 15(d)
29. Rule 13a–3—Reporting by Form 40–F Registrant
30. Rule 13a–10—Transition Reports
31. Rule 13a–16—Reports of Foreign Private Issuers on Form 6–K
32. Rule 13e–4—Tender Offers by Issuers
33. Schedule 13E–4F—Tender Offer Statement
34. Rule 14d–1—Scope of and Definitions Applicable to Regulations 14D and 14E
35. Schedule 14D–1F—Tender Offer Statement
36. Schedule 14D–9F—Recommendation of Subject Company
37. Rule 14e–2—Position of Subject Company
38. Rule 15d–4—Reporting by Form 40–F Registrants
39. Rule 15d–5—Reporting by Successor Issuers
40. Rule 15d–10—Transition Reports
41. Rule 15d–16—Reports of Foreign Private Issuers on Form 6–K
42. 17 CFR Part 249—Authority
43. Form 20–F—Registration of Foreign Private Issuers
44. Form 40–F—Registration of Securities of Certain Canadian Issuers
45. Form F–X—Appointment of Agent for Service of Process
46. Form 6–K—Report of Foreign Private Issuers
47. Form 10–K—Annual and Transition Reports

Trust Indenture Act

48. 17 CFR part 260—Authority
49. Rule 0–11—Liability for Certain Statements by Issuers
50. Rule 4d–9—Exemption for Canadian Trust Indentures
51. Rule 10a–4—Consent of Trustee to Service of Process
52. Rule 10a–5—Eligibility of Canadian Trustees
53. 17 CFR part 269—Authority
54. Form F–X—Appointment of Agent for Service of Process
55. Form T–1—Statement of Eligibility
56. Form T–6—Application under Section 310(a)(1)

XI. Statutory Basis of Rules, Forms and Schedules and Rule and Form Revisions

These revisions are being adopted pursuant to sections 7, 8, 10 and 19 of the Securities Act,[146] sections 3(b), 4A, 12, 13, 14, 15, 16, and 23 of the Exchange Act,[147] and sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act.[148]

List of Subjects in 17 CFR Parts 200, 201, 210, 229, 230, 239, 240, 249, 260 and 269

Authority delegations (Government agencies), Accounting, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

XII. Text of Rules, Forms and Schedules and Rule and Form Revisions

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78*l*, 78m, 78n, 78*o*(d). Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78s, 78q, 78eee, 79d.

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[146] 15 U.S.C. 77g, 77h, 77j, and 77s.

[147] 15 U.S.C. 78*l*, 78m, 78n, 78*o*, 78p, and 78w.

[148] 15 U.S.C. 77ddd 77eee, 77ggg, 77hhh, 77jjj, 77nnn, and 77sss.

2. The authority citations following §§ 200.30–1 and 200.30–3 are removed.

3. By amending paragraph (f) of § 200.30–1 to add paragraph (f) (14) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) * * *

(14) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 14d–1(h) (§ 240.14d–1(b) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and rule 14e–1 of Regulation 14E, to such offer is necessary or appropriate in the public interest.

* * * * *

4. By revising paragraph (a)(35) of § 200.30–3 to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(35)(i) To grant exemptions from rule 13e–4 (§ 240.13e–4 of this chapter) pursuant to rule 13e–4(h)(7) (§ 240.13e–4(h)(7) of this chapter);

(ii) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 13e–4(g) (§ 240.13e–4(g) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of section 13(e)(1) and rule 13e–4 and Schedule 13E–4 thereunder to such offer is necessary or appropriate in the public interest.

* * * * *

PART 201—RULES OF PRACTICE

5. The authority citation for part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 201.6 is also issued under 15 U.S.C. 77h, 77ttt, 78d–1, 78v, 79s, 80a–40, 80b–12.

Section 201.23(e) is also issued under 28 U.S.C. 2112(a).

Section 201.24 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(d), 78*l*, 78m, 78n, 78*o*(d).

6. The authority citation following § 201.24 is removed.

7. By revising the first sentence of the introductory text of § 201.24 to read as follows:

§ 201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted.* * *

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

8. The authority citation for part 210 is revised to read:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*, 78w(a), 79e(a) (b), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

Section 210.3–02 is also issued under 15 U.S.C. 79n, 79t(a).

Section 210.3–19 is also issued under 15 U.S.C. 80b–11.

9. The authority citations following §§ 210.3–01, 210.3–02, 210.3–12 and 210.3–19 are removed.

10. By revising paragraph (h) of § 210.3–01 to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3–19 in lieu of the financial statements specified in this rule.

11. By revising paragraph (d) of § 210.3–02 to read as follows:

§ 210.3–02 Consolidated statements of income and changes in financial position.

* * * * *

(d) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3–19 in lieu of the financial statements specified in this rule.

12. By revising paragraph (f) of § 210.3–12 to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(f) Any foreign private issuer may file financial statements whose age is specified in § 210.3–19.

13. By revising paragraph (a) of § 210.3–19 to read as follows:

§ 210.3–19 Special provisions as to financial statements for foreign private issuers.

(a) A foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), other than a registered management investment company or an employee plan, shall include the following financial statements for the registrant and its subsidiaries consolidated and, where appropriate, its predecessors:

(1) Audited balance sheets as of the end of each of the two most recent fiscal years.

(2) Audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

14. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78*o*, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

Section 229.302 is also issued under 15 U.S.C. 79e, 79n, 79t.

Section 229.404 is also issued under 15 U.S.C. 77nn(25) and 77nn(26).

15. The authority citations following §§ 229.302 and 229.404 are removed.

16. By revising the introductory text of paragraph (a)(5) of § 229.302 to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) * * *

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that meets both of the following tests:

* * * * *

17. By revising General Instruction 1. to § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

General Instructions to Item 402

1. *Foreign private issuers.* A foreign private issuer may respond to all of Item 402 by indicating the aggregate payments or benefits paid or to be paid to all executive officers as a group unless such registrants disclose to

their security holders or otherwise make public the information specified in this section for individually named executive officers, in which case such information also shall be disclosed.

* * * * *

18. By revising Instruction 3 to § 229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

* * * * *

Instructions to Item 404

* * * * *

3. A foreign private issuer may respond to Item 404 only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in that Item.

19. By revising paragraph (b)(10)(iii)(B)(*5*) of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(10) * * *

(iii) * * *

(B) * * *

(*5*) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information on an aggregate basis as permitted by General Instruction 1 to Item 402 (§ 229.402) or by Item 11 of Form 20–F.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

20. The authority citation for part 230 is revised to read:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 79t, and 80a–37, unless otherwise noted.

Section 230.473 is also issued under 15 U.S.C. 79(t).

Section 230.502 is also issued under 15 U.S.C. 80a–8, 80a–29, 80a–30.

21. The authority citations following §§ 230.158, 230.175, 230.473, and 230.502 are removed.

22. By revising paragraphs (a) and (b) of § 230.158 to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) An "earning statement" made generally available to securityholders of the registrant pursuant to the last paragraph of section 11(a) of the Act shall be sufficient for the purposes of such paragraph if:

(1) There is included the information required for statements of income contained either:

(i) In Item 8 of Form 10–K (§ 249.310 of this chapter), part I, Item 1 of Form 10–Q (§ 249.308a of this chapter), or rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934;

(ii) In Item 17 of Form 20–F (§ 249.220f of this chapter), if appropriate; or

(iii) In Form 40–F (§ 249.240f of this chapter); and

(2) The information specified in the last paragraph of section 11(a) is contained in one report or any combination of reports either:

(i) On Form 10–K, Form 10–Q, Form 8–K (§ 249.308 of this chapter), or in the annual report to securityholders pursuant to rule 14a–3 under the Securities Exchange Act of 1934; or

(ii) On Form 20–F, Form 40–F or Form 6–K (§ 249.306 of this chapter).

A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph if the parent's income statements satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An "earning statement" not meeting the requirements of this paragraph may otherwise be sufficient for purposes of the last paragraph of section 11(a).

(b) For purposes of the last paragraph of section 11(a) only, the "earning statement" contemplated by paragraph (a) of this section shall be deemed to be "made generally available to its securityholders" if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10–K, Form 10–Q, Form 8–K, Form 20–F, Form 40–F, or Form 6–K, or has supplied to the Commission copies of the annual report sent to securityholders pursuant to rule 14a–3(c), containing such information.

A registrant may use other methods to make an earning statement "generally available to its securityholders" for purposes of the last paragraph of section 11(a).

* * * * *

23. By revising paragraph (b)(1)(i) of § 230.175 to read as follows:

§ 230.175 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

24. By revising paragraph (b)(3) and by adding a new paragraph (b)(6) to § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * *

(3) A form of prospectus that reflects facts or events other than those covered in paragraphs (b) (1), (2) and (6) of this section that constitute a substantive change from or addition to the information set forth in the last form of prospectus filed with the Commission under this section or as part of a registration statement under the Securities Act shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

(6) A form of prospectus used in connection with an offering of securities under Canada's National Policy Statement No. 45 pursuant to rule 415 under the Securities Act (§ 230.415 of this chapter) that is not made in the United States shall be filed with the Commission no later than the date it is first used in Canada, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

25. 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, F–10 and F–80.

(a) A registration statement on Form F–7, Form F–8 or Form F–80 (§ 239.37, § 239.38 or § 239.41 of this chapter), and any amendment thereto, shall become effective upon filing with the Commission. A registration statement on Form F–9 or Form F–10 (§ 239.39 or § 239.40 of this chapter), and any amendment thereto, relating to an offering being made contemporaneously in the United States and Canada shall become effective upon filing with the

Commission, unless designated as preliminary material on the Form.

(b) Where no contemporaneous offering is being made in Canada, a registrant filing on Form F–9 or Form F–10 may designate on the facing page of the registration statement, or any amendment thereto, a date and time for such filing to become effective that is not earlier than seven calendar days after the date of filing with the Commission, and such registration statement or amendment shall become effective in accordance with such designation; *provided, however,* That such registration statement or amendment may become effective prior to seven calendar days after the date of filing with the Commission if the securities regulatory authority in the review jurisdiction issues a receipt or notification of clearance with respect thereto before such time elapses, in which case the registration statement or amendment shall become effective by order of the Commission as soon as practicable after receipt of written notification by the Commission from the registrant or the applicable Canadian securities regulatory authority of the issuance of such receipt or notification of clearance.

26. By revising paragraph (d) of § 240.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form F–7, F–8 or F–80 (§ 239.37, § 239.38 or § 239.41 of this chapter); on Form F–9 or F–10 (§ 239.39 or § 239.40 of this chapter) relating to an offering being made contemporaneously in the United States and the registrant's home jurisdiction; on Form S–8 (§ 239.16b of this chapter) ; on Form S–3, F–2 or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

27. By revising paragraphs (b)(2)(i)(D) and (b)(2)(ii)(D) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) If the issuer is a foreign private issuer, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i) (B) or (C) of this section, as appropriate.

(ii) * * *

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraph (b)(2)(ii) (A) or (B) of this section, the information contained in its most recent filing on Form 20–F or Form F–1 (§ 239.31 of the chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

28. The authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78*l*, 78m, 78*o*, 78w, 80a–8, 80a–29, 80a–30, 80a–37 and 12 U.S.C. 241.

29. The authority citations following §§ 239.31, 239.32 and 239.33 are removed.

30. By revising paragraph (e) of § 239.12 and revising General Instruction I.E. of Form S–2 to read as follows:

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

(e) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a) of this section relating to organization and principal business shall be deemed to have met these registration eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (c) of this section.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–2

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–2

* * * * *

E. A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.A. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.C. above.

* * * * *

31. By revising paragraph (a)(5) of § 239.13 and revising General Instruction I.A.5. of Form S–3 to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(5) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a)(1) of this section relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (a)(3) of this section.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. * * *

5. A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.A.1. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under Section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.A.3. above.

* * * * *

32. By revising General Instruction F to Form S–4 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

F. Transactions Involving Foreign Private Issuers

If a U. S. registrant is acquiring a foreign private issuer, as defined by rule 405 (§ 230.405 of this chapter), such registrant may use this Form and may present information about the foreign private issuer pursuant to Form F–4. If the registrant is a foreign private issuer, such registrant may use Form F–4 and

1. If the company being acquired is a foreign private issuer, may present information about such foreign company pursuant to Form F–4 or

2. If the company being acquired is a U.S. company, may present information about such company pursuant to this Form.

* * * * *

33. By revising General Instructions C.1., C.2.(a) and G(2), paragraph (a) of item 3, and Note (2) to item 9 of Form S–8 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–8

* * * * *

General Instructions

* * * * *

C. Reoffers and Resales

1. *Securities.* Reoffers and resales of the following securities may be made on a continuous or delayed basis in the future, as provided by rule 415 (§ 230.415), pursuant to a registration statement on this form by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of part I of Form S–3 (or, if the registrant is a foreign private issuer, in accordance with part I of Form F–3), filed with the registration statement on Form S–8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities,* which are defined for purposes of this General Instruction C as securities acquired under a Securities Act registration statement held by affiliates of the registrant as defined in rule 405 (§ 230.405). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling securityholder pursuant to an employee benefit plan; or

(b) *Restricted securities,* which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in rule 144(a)(3) (§ 230.144(a)(3)), whether or not held by affiliates of the registrant. Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling securityholder prior to the filing of the registration statement.

2. *Limitations.* * * *

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S–3 (or if the registrant is a foreign private issuer, the registrant requirements for use of Form F–3), then control and restricted securities may be registered for reoffer and resale without any limitations.

* * * * *

G. Updating. * * *

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and the section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8–K (§ 249.308) pursuant to item 5 thereof (or, if the registrant is a foreign private issuer, on Form 6–K (§ 249.306)).

* * * * *

Item 3. Incorporation of Documents by Reference

* * * * *

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to section 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) The latest prospectus filed pursuant to rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10, Form 20–F or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

* * * * *

Item 9. Undertakings

* * * * *

Notes to Item 9: * * *

(2) With respect to registration statements filed on this form, foreign private issuers are not required to furnish the item 512(a)(4) undertaking.

* * * * *

34. By revising General Instruction E to Form S–11 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–11

* * * * *

General Instructions

* * * * *

E. Foreign Issuers.

A foreign private issuer may comply with items 19, 20, 21, 22 and 26 of this Form by furnishing the information specified in items 3, 4, 10, 11, and 18, respectively, of Form 20–F (§ 249.220f of this chapter).

* * * * *

35. By revising paragraph (a) of § 239.31 and revising General Instruction I. A. of Form F–1 to read as follows:

§ 239.31 Form F–1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F–1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–1

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–1

A. Form F–1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers as defined in rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

36. By revising paragraphs (a), (b)(2), (d), (e) and (g) of § 239.32, revising General Instructions I. A., I. D., I. E. and I. G of Form F–2, and revising paragraphs (a) and (b)(2) of item 11, item 12 and Instructions 1 and 4 thereto of Form F–2 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

(b) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $300 million or more, or if non-convertible debt securities that are "investment grade debt securities," as defined below, are being registered and

(ii) The registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed.

* * * * *

(d) The financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with item 18 of Form 20–F.

(e) The provisions of paragraphs (b)(1)(i) and (d) of this section do not apply if the Registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed and if the only securities being registered are to be offered:

(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing

securityholders of the class of securities to which the rights attach;

(2) Pursuant to a dividend or interest reinvestment plan; or

(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (e) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

(g) If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest.

Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–2 (§ 239.12 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–2

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–2

* * * * *

A. The Registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

B. The financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 thereof.

E. The provisions of paragraphs (B)(1)(a) and (D) do not apply if the Registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed and if the only securities being registered are to be offered: (1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (E) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

G. If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest.

Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–2 (§ 239.12 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20–F, Form 40–F or Form 10–K under the Exchange Act.

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20–F, Form 40–F or Form 10–K.

* * * * *

Item 12. Information with Respect to the Registrant.

The registrant shall incorporate by reference and deliver with the prospectus the latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report. The registrant may incorporate by reference and deliver with the prospectus any other Form 10–Q or Form 8–K, and any Form 6–K containing information meeting the requirements of this Form.

Instructions

1. Reference is made to General Instruction I.D. that, in some cases, requires the financial statements in the Form 20–F, Form 40–F or Form 10–K to comply with Item 18 of Form 20–F as a condition for eligibility to use Form F–2.

* * * * *

4. The Form 20–F, Form 40–F or Form 10–K shall be delivered with the preliminary prospectus but need not be redelivered with the final prospectus to a recipient that had previously received the Form 20–F, Form 40–F or Form 10–K with the preliminary prospectus.

* * * * *

37. By revising paragraphs (a)(1) and (a)(6)(iii), the Note following (a)(6)(iii), paragraphs (b)(1) and (b)(3) of § 239.33, and revising General Instructions I.A.1., I.A.6. (iii), the Note following I.A.6. (iii), I.B.1. and I.B.3., and paragraphs (a) and (b)(2) of Item 11 and paragraphs (a) and (b) of Item 12 of Form F–3 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F, on Form 10–K (§ 240.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

(6) *Majority owned Subsidiaries.* * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in paragraphs (a)(6) (i), (ii), and (iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

(b) *Transaction requirements.* * * *

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

* * * * *

1. The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

6. *Majority owned Subsidiaries.* * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in (i), (ii) and (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

B. *Transaction Requirements* * * *

1. *Primary Offerings by Certain Registrants*

Securities to be offered for cash by or on behalf of a registrant; if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with item 18 of Form 20–F.

* * * * *

3. *Transactions involving Secondary Offerings*

Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20–F, Form 40–F or Form 10–K under the Exchange Act.

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with item 12 are not sufficiently current to comply with the requirements of rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20–F, Form 40–F or Form 10–K in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 12. Incorporation of Certain Information by Reference

(a) The registrant's latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction

If the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K is amended to include the information specified in Item 18 of Form 20–F, the prospectus shall state that the Form 20–F, Form 40–F or Form 10–K has been so amended. Reference is made to the Transaction Requirements in General Instruction I.B. that, in some cases, require the financial statements in the Form 20–F, Form 40–F or Form 10–K to comply with Item 18 of Form 20–F as a condition for eligibility to use Form F–3.

(b) The prospectus also shall state that all subsequent filings on Form 20–F, Form 40–F, Form 10–K, Form 10–Q or Form 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

* * * * *

38. By revising § 239.34 and revising General Instructions A.1. and C.1.(d); paragraphs (a) and (b) of Item 10; paragraph (a)(1), Instructions 1. and 2. following paragraph (a)(3) and paragraph (b) of Item 11; Item 12; Item 13; and paragraph (b)(2) of Item 17 of Form F–4 to read as follows:

§ 239.34 Form F–4, for registration of securities of foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) of this section registered on one registration statement.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

A. Rule as to Use of Form F–4.

1. This Form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (1) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

* * * * *

C. Information With Respect to the Company Being Acquired.

1. * * *

(d) If the company to be acquired is a U.S. company, the registrant shall present information about such other company pursuant to Instructions C and F of Form S–4 (§ 239.25 of this chapter).

* * * * *

Item 10. Information With Respect to F–3 Companies

* * * * *

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, Form 40–F in accordance with Item 11 are not sufficiently current to comply with the requirements of rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended, or in a Form 6–K, Form 10–Q or Form 8–K; and

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

(a) * * *

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to be filed;

* * * * *

Instructions

1. All annual reports on Form 20–F, on Form 10–K or on Form 40–F filed by the registrant applicable to items 11 (a) and (b) herein shall contain financial statements that comply with item 18 of Form 20–F except that financial statements of the registrants may comply with item 17 of Form 20–F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F–3.

2. Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, should be updated, to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 to Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K, as applicable.

* * * * *

(b) The prospectus also shall state that all annual reports on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F and all Forms 10–Q and 8–K, and any Form 6–K so designated, subsequently filed by the registrant pursuant to sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of securityholders is to be held, the date on which such meeting is held;

(2) If a meeting of securityholders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

Instruction

Attention is directed to rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information with Respect to F–2 or F–3 Registrants

If the registrant meets the requirements for use of Form F–2 or F–3 and elects to comply with this item, furnish the information required by either paragraph (a) or (b) of this item. *However,* the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this item if the financial statements in the registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F do not reflect: (1) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to rule 11–01(b) of Regulation S–X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F, or a complete and legible facsimile of such Form 20–F, Form 10–K or Form 40–F:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20–F, Form 10–K or Form 40–F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 10–K or Form 40–F in accordance with item 13 are not sufficiently current to comply with the requirements of item 3–19 of Regulation S–X, provide the information required by rule 10–01 of Regulation S–X and item 9 of Form 20–F by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to whom a prospectus is delivered a copy of the registrant's Form 10–Q, Form 8–K or Form 6–K report that contains such later information; or

(iii) In an amended Form 20–F, Form 40–F or Form 10–K in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

(3) If not reflected on the registrant's latest Form 20–F, Form 10–K or Form 40–F annual report, provide information required by rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements

were included in the latest filing on Form 20–F, Form 10–K or Form 40–F and that have not been described in a report on Form 6–K, Form 10–Q or Form 8–K delivered with the prospectus in accordance with paragraph (2)(ii) of this item.

(5) Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K.

(b) If the registrant does not elect to deliver its latest Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, Form 40–F annual report to the securityholders of the company to be acquired:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year based on the requirements of items 1 and 2 of Form 20–F. The description shall also take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by item 18 of Form 20–F. In addition, provide:

(i) The interim financial information as required by rule 10–01 of Regulation S–X sufficient to meet the requirements of rule 3–19 of Regulation S–X;

(ii) Financial information required by rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to rule 11–01(b) of Regulation S–X; and

(v) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to item 4–01(a)(2) of Regulation S–X.

(3) Furnish the information required by the following:

(i) Items 1 (a)(3) and (a)(4) of Form 20–F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 of Form 20–F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 6 of Form 20–F, exchange controls and other limitations on securityholders;

(iv) Item 7 of Form 20–F, taxation;

(v) Item 8 of Form 20–F, selected financial data;

(vi) Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by item 18 of Form 20–F (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to item 17(a) of this Form), and financial information required by rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with rule 3–19 of Regulation S–X.

Item 13. Incorporation of Certain Information by Reference

If the registrant meets the requirements of Form F–2 or F–3 and elects to furnish information in accordance with the provisions of item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; and

(2) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this item.

Instructions

1. All annual reports on Form 20–F, Form 10–K or Form 40–F filed by the registrant applicable to item 13 (a) or (b) herein shall contain financial statements that comply with item 18 of Form 20–F.

2. Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information meeting the requirements of Form F–2. See rules 4–01(a)(2) and 10–01 of Regulation S–X and item 18 of Form 20–F.

4. Attention is directed to rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or reports on Form 6–K, Form 10–Q or Form 8–K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–2 or F–3 Companies

* * * * *

(b) * * *

(2) Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K;

* * * * *

39. By adding §§ 239.37, 239.38, 239.39, 239.40, 239.41 and 239.42 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 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 securityholders.

(a) Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of the registrant's securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the number of securities held by them as of the record date for the rights offer.

(b) Form F–7 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer; and

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has

been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction

For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the registrant, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the registrant as being located in the United States.

(e) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(f) Any non-U.S. person acting as trustee with respect to the securities being registered shall file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.38 Form F–8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements. (c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F–8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied it the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 25 percent of the class of subject securities outstanding shall be held by U. S. holders.

Instructions

1. For purposes of exchange offers, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 25 percent of such outstanding securities, *unless* (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 25 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 25 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U. S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(h) In the case of a business combination, Form F–8 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating

companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 25 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities, is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

(a) Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or investment grade preferred securities that are:

(1) Offered for cash or in connection with an exchange offer; and

(2) Either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (e) of this section, are thereafter only convertible into a security of another class of the issuer.

Instruction

Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

(b) Form F–9 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form, and is currently in compliance with such obligations;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and

(5) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that the requirements set forth in paragraphs (b)(4) and (b)(5) of this section shall not apply if the securities being registered on this Form are not convertible into another security.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

(c) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(d) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

Instructions

1. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(e) If the registrant is a majority-owned subsidiary offering debt securities or preferred shares, it shall be

deemed to meet the requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(f) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month reporting requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(h) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(i) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(a) Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

(b) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(c) Form F–10 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however,* that in the case of a business combination, each participating company other than the successor registrant must meet such 36-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *provided, however,* that in the case of a business combination, the aggregate market value of the outstanding shares of each participating company other than the successor registrant is (CN) $360 million or more, except that any such participating company shall not be required to meet such market value requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such market value requirement; and

(5) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor registrant is (CN) $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and *provided further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

(d) In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(e) In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(f) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

(g) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(h) With respect to registration of debt securities or preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (c)(3), (c)(4) and (c)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (c) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(i) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of paragraph (c)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(j) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.41 Form F-80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be

made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F–80 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d) (3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 40 percent of the class of subject securities outstanding shall be held by U.S. holders.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(h) In the case of a business combination, Form F–80 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 40 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders, as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.42 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. 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), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37 of this chapter), F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

40. The authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

Section 240.3b–6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.12g–3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.12g3–2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.14d–1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 79t, 80a–37.

Section 240.14e–2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 79t, 80a–37(a).

Section 240.15d–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.15d–10 is also issued under 15 U.S.C. 80a–20(a), 80a–37(a).

41. The authority citations following §§ 240.3a12–3, 240.3b–6, 240.12g–3, 240.12g3–2, 240.13a–16, 240.13e–4, 240.14d–1, 240.14e–2, 240.15d–5 and 240.15d–16 are removed.

42. By revising paragraph (b) to § 240.3a12–3 to read as follows:

§ 240.3a12–3 Exemptions from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

* * * * *

(b) Securities registered by a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

43. By revising paragraph (b)(1)(i) of § 240.3b–6 to read as follows:

§ 240.3b–6 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its

most recent annual report on Form 10–K or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

44. By revising paragraphs (a), (b) and (c)(2) and removing paragraph (c)(3) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 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 or Form F–80 and following the succession the successor would not be required to register such class of securities under section 12 but for this section.

(c) * * *

(2) A foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3.

* * * * *

45. By revising paragraphs (b)(4), (d)(1) and (d)(2) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) * * *

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40–F or Form 6–K need not be furnished under paragraph (b)(1) of this section.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80) ;

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8, F–9, F–10 or F–80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

* * * * *

46. By adding § 240.12h–4 to read as follows:

§ 240.12h–4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–7, Form F–8 or Form F–80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3–2(b).

47. By adding § 240.13a–3 to read as follows:

§ 240.13a–3 Reporting by Form 40–F registrant.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a–1 through 240.13a–17 of this chapter).

48. By revising paragraph (g)(1) and the Note following paragraph (i) to § 240.13a–10 to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note.—In addition to the report or reports to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B. 1. to that form.

49. By revising paragraph (a) of § 240.13a–16 to read as follows:

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a–1 [17 CFR 240.13a–1] shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1–1 [17 CFR 270.30b1–1]; or

(2) Issuers of American depositary receipts for securities of any foreign issuer.

* * * * *

50. By amending § 240.13e–4 to redesignate paragraph (g) as (h) and to

add a new paragraph (g) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(g) The requirements of section 13(e)(1) of the Act and Rule 13e-4 and Schedule 13E-4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, is a foreign private issuer, and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities that is the subject of the tender offer is held by U. S. holders, and the tender offer is subject to, 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 (unless the issuer has received an exemption(s) from, and the issuer tender offer does not comply with, requirements that otherwise would be prescribed by this section), *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 (§ 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 (g)(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.

Note: Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by this section, the issuer tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the appl cable Canadian regulatory provisions are adequate to protect the interest of investors.

* * * * *

51. By adding § 240.13e-102 to read as follows:

§ 240.13e-102 Schedule 13E-4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

Securities and Exchange Commission
Washington, DC 20549
Schedule 13E-4F
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 (if applicable))

(Jurisdiction of Issuer's Incorporation or Organization)

(Name(s) 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 securityholders)

Calculation of Filing Fee *
Transaction Valuation
Amount of Filing Fee

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Registration No.: _____
Filing Party:

Form: _____Date Filed: _____

General Instructions

I. Eligibility Requirements for Use of Schedule 13E-4F

A. Schedule 13E-4F may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada or any Canadian province or territory; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The calculation of securities held by U.S. holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 14D-1F and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any issuer using this Schedule must extend the cash tender or exchange offer to U.S. holders of the class of securities subject to the offer upon terms and conditions not less favorable than those extended to any other holder of the same class of such securities, 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 registered or required to be registered under the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Five 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 of filing this Schedule with the Commission, the issuer shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U.S. dollars in the amount prescribed by section 13(e)(3) of the Exchange Act. See also Rule 0–9 of the Exchange Act.

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them, calculated into U.S. dollars.

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based on the market value of the securities to be acquired by the issuer as established in accordance with paragraph (3) of this section.

(3) When the fee is based upon the market value of the securities, such market value shall be established by either the average of the high and low prices reported on 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 5 business days prior to the date of filing the Schedule. If there is no market for the securities to be acquired by the issuer, the value shall be based upon the book value of such securities computed as of the latest practicable date prior to the date of filing of the Schedule, unless the issuer of the 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.

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. 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. If any other 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 substantive 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.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e–4(g) under the Exchange Act, the issuer shall be deemed to comply with the requirements of section 13(e)(1) of the Exchange Act and Rule 13e–4 and Schedule 13E–4 thereunder in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule, *provided that*, if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Rule 13e–4, the issuer (absent an order from the Commission) shall comply with the provisions of section 13(e)(1) and Rule 13e–4 and Schedule 13E–4 thereunder.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, section 13(e)(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 this Schedule 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* Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from 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.

(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, 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 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, 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 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, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign 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.

"Investors should be aware that the issuer or its affiliates, directly or indirectly, may bid for or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the 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—Undertakings and Consent to Service of Process

1. Undertakings

The Schedule shall set forth the following undertakings of the issuer:

(a) The issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

(b) 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 in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

2. Consent to Service of Process

(a) At the time of filing this Schedule, the issuer shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any 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)

52. By amending § 240.14d–1 to redesignate paragraph (b) as (c) and to add a new paragraph (b) and Notes thereto to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, shall be deemed satisfied with respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, if such issuer is a foreign private issuer and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities outstanding that is the subject of the tender offer is held by U.S. holders, and the tender offer is subject to, 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 (unless the bidder has received an exemption(s) from, and the tender offer does not comply with, requirements that otherwise would be prescribed by Regulation 14D or 14E), *provided that:*

(1) In the case of tender offers subject to section 14(d)(1) of the Act, 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 (§ 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.

Notes: 1. For purposes of any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Act, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to the commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by Regulation 14D or 14E, the tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

* * * * *

53. By adding § 240.14d–102 to read as follows:

§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

Securities and Exchange Commission

Washington, DC

Schedule 14D–1F

Tender Offer Statement Pursuant to Rule 14d–1(b) Under the Securities Exchange Act of 1934

[Amendment No. _____]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of bidder)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*

Transaction Valuation

Amount of Filing Fee

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Registration No.: _____

Filing Party: _____
Form: _____
Date Filed: _____

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a cash tender or exchange offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40 percent of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN) ; (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 40 percent or more of the subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 40 percent of such securities.

4. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F and/or Form F–8 or Form F–80, the date for calculation of U. S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

5. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any bidder using this Schedule must extend the cash tender or exchange offer to U. S. holders of securities of the subject company upon terms and conditions not less favorable than those extended to any other holder of such securities, 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 registered or required to be registered under 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 Exchange Act. Persons 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. Five 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 of filing this Schedule with the Commission, the bidder shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U. S. dollars in the amount prescribed by section 14(a)(3) of the Exchange Act. See also Rule 0–9 under the Exchange Act.

(1) Where the bidder 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 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. 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. If any other 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 substantive 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.

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 under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *provided that,* if an exemption has been granted from requirements of Canadian federal, provincial, and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Regulation 14D or 14E, the bidder (absent an order from the Commission) shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" for purposes of section 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 Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from 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.

(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 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, 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 the subject company is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign 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.

"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:

"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 on behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—Undertakings and Consent to Service of Process

1. *Undertakings*

The Schedule shall set forth the following undertakings of the bidder:

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 in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

c. 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 in connection with the offer.

2. *Consent to Service of Process*

(a) At the time of filing this Schedule, the bidder (if a non-U. S. person) shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. 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)

54. By adding § 240.14d–103 to read as follows:

§ 240.14d–103 Schedule 14D–9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d–1(b) and 14e–2(c) thereunder.

Securities and Exchange Commission
Washington, DC 20549

Schedule 14D–9F

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934 and Rules 14d–1(b) and 14e–2(c) Thereunder

[Amendment No. ____]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] Name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Name(s) 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(s) 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 that is a foreign private issuer (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of its securities filed on Schedule 14D–1F.

For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

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.

II. Filing Instructions

A. Five 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. 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. If any other part of this Schedule, or any exhibit or other paper or document filed as part of this Schedule, is in a language other than English, it shall be accompanied by a substantive 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.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14e–2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this Schedule shall be filed by an issuer, a class of the securities of which is the subject of a cash tender or exchange offer filed on Schedule 14D–1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be 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.

(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, to the extent applicable, 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 the subject issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign 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 jurisdiction(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. *Undertaking*

The Schedule shall set forth the following undertaking of the person filing it:

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.*

(a) At the time of filing this Schedule, the person(s) (if a non-U. S. person) so filing shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the persons signing consent 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 them 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)

55. By adding paragraph (c) to § 240.14e-2 to read as follows:

§ 240.14e-2 Position of subject company with respect to a tender offer.

* * * * *

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D–1F and conducted in reliance upon and in conformity with Rule 14d–1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall file with the Commission on Schedule 14D–9F the entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in the United States in accordance with such laws, regulations and policies.

56. By adding § 240.15d–4 to read as follows:

§ 240.15d–4 Reporting by Form 40–F Registrants.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 15D (§§ 240.15d–1 through 240.15d–21 of this chapter).

57. By revising paragraph (b) of § 240.15d–5 and adding paragraph (c) to § 240.15d–5 to read as follows:

§ 240.15d–5 Reporting by successor issuers.

* * * * *

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 240.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20–F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F–8 (§ 239.38 of this chapter), Form F–10 (§ 239.40 of this chapter) or Form F–80 (§ 239.41 of this chapter).

58. By revising paragraph (g)(1) and the Note following paragraph (i) of § 240.15d–10 to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

59. By amending § 240.15d–16 to remove existing paragraph (a)(2) and to redesignate existing paragraph (a)(3) as (a)(2).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

60. The authority citation for part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.310 is also issued under 15 U.S.C. 78m, 78*o*(d) , and 78w(a).

61. The authority citation following § 249.310 is removed.

62. By revising paragraph (a), removing existing paragraph (b), redesignating existing paragraphs (c) as (b) and (d) as (c) of § 249.220f; and revising General Instruction A.(a), removing existing General Instruction A.(b), redesignating existing General Instructions A.(c) as A.(b) and A.(d) as A.(c) to Form 20–F to read as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

A. Rule as to Use of Form 20–F

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

* * * * *

63. By adding §§ 249.240f and 249.250 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

(a) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d–4 (17 CFR 240.15d–4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9, F–10 or F–80 under the Securities Act of 1933 (the "Securities Act").

Note: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F–7, F–8 or F–80 if the issuer, at the time of filing such Form, is exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). See Rule 12h–4 under the Exchange Act.

(b) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

(1) The registrant is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form and is currently in compliance with such obligations;

(4) The aggregate market value of the outstanding equity shares of the registrant is:

(i) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or

(ii) (CN) $360 million or more in all other cases; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and

(5) The aggregate market value of the public float of such equity shares is (CN) $75 million or more; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, an "affiliate" of a person is anyone who beneficially owns directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

(c) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(e) Registrants registering securities on this Form, and registrants filing annual reports on this Form who have not previously filed a Form F–X (§ 249.250 of this chapter) in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

§ 249.250 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. 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), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 249.37 of this chapter), F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

64. By revising General Instructions A and B and revising the cover page of Form 6–K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 6–K

* * * * *

General Instructions

A. Rule as to Use of Form 6–K.

This form shall be used by foreign private issuers which are required to furnish reports pursuant to Rule 13a–16 or 15d–16 under the Securities Exchange Act of 1934.

B. Information and Document Required to be Furnished.

Subject to General Instruction D herein, an issuer furnishing a report on this form shall furnish whatever information, not required to be furnished on Form 40–F or previously furnished, such issuer (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its securityholders.

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries concerning: changes in business; changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of securityholders; transactions with directors, officers or principal securityholders; the granting of options or payment of other compensation to directors or officers; and any other information which the registrant deems of material importance to securityholders.

This report is required to be furnished promptly after the material contained in the report is made public as described

above. The information and documents furnished in this report shall not be deemed to be "filed" for the purposes of section 18 of the Act or otherwise subject to the liabilities of that section.

If a report furnished on this form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and furnished with the form.

* * * * *

Form 6–K
Report of Foreign Private Issuer
Pursuant to Rule 13a–16 or 15d–16 of the
Securities Exchange Act of 1934
For the month of _____, 19____

(Translation of Registrant's name into English)

(Address of principal executive office)

[Indicate by check mark whether the registrant files or will file annual reports under cover Form 20–F or Form 40–F.
Form 20–F ____ Form 40–F ____

[Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.
Yes ____ No ____

[If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3–2(b) : 82–_____.]

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)
By_____
(Signature)*
Date _____
* Print the name and title under the signature of the signing officer.

65. By revising General Instruction G. (3) of Form 10–K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

(3) The information required by part III (Items 10, 11, 12 and 13) may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10–K. However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission, the Items comprising the part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers required by Item 401 of Regulation S–K (§ 229.401 of this chapter) may be included in part I of Form 10–K under an appropriate caption. See Instruction 3 to Item 401(b) of Regulation S–K (§ 229.401(b) of this chapter).

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

66. The authority citation for part 260 continues to read as follows:

Authority: 15 U. S. C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

67. By revising paragraph (b)(1)(i) of § 260.0–11 to read as follows:

§ 260.0–11 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

68. By adding new § 260.4d–9 to read as follows:

§ 260.4d–9 Exemption for Canadian Trust Indentures from Specified Provisions of the Act.

(a) Subject to paragraph (b) of this section [17 CFR 260.4d–9], any trust indenture filed in connection with offerings on a registration statement on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter] shall be exempt from the operation of sections 310(a)(3) and 310(a)(4) , sections 310(b) through 316(a), and sections 316(c) through 316(a) of the Act; *provided that* the trust indenture is subject to

(1) the Canada Business Corporations Act, R. S. C. 1985;

(2) the Bank Act, R. S. C. 1985; or

(3) the Business Corporations Act, 1982 (Ontario), S. O. 1982.

(b) Any trust indenture filed by obligors incorporated or continued under the Company Act, R. S. B. C. 1979, c. 59 shall be ineligible for exemption pursuant to paragraph (a) of this section [17 CFR 260.4d–9].

69. By revising § 260.10a–4 to read as follows:

§ 260.10a–4 Consent of trustee to service of process.

At the time of filing an application pursuant to Rule 10a–1 [§ 260.10a–1 of this chapter] and at such time as it files a statement of eligibility to act as trustee under an indenture qualified under the Act, an indenture trustee organized and doing business under the laws of a foreign government shall furnish to the Commission on Form F–X [§ 249.250 of this chapter] a written consent of the trustee and power of attorney designating a U. S. person with an address in the United States as agent upon whom may be served any process, pleadings, subpoenas or other papers in any Commission investigation or administrative proceeding and any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in relation to which the indenture trustee proposes to act as trustee pursuant to any rule or order under section 310(a) of the Act and stipulates and agrees that any such suit, action or proceeding may be commenced by the service of process upon said agent for service of process, and that such service shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

70. By adding new § 260.10a–5 to read as follows:

§ 260.10a–5 Eligibility of Canadian Trustees.

(a) Subject to paragraphs (b), (c) and (d) of this section [17 CFR 260.10a–5], any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter] that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that

is subject to supervision or examination pursuant to the Trust Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

(b) Any trust company that is incorporated and regulated as a trust company under the laws of the province of British Columbia shall be ineligible for appointment pursuant to paragraph (a) of this section (17 CFR 260.10a–5).

(c) Any obligor incorporated or continued under the Company Act, R.S.B.C. 1979, c. 59 shall be ineligible to appoint a Canadian trustee to act as sole trustee under an indenture qualified or to be qualified under the Act pursuant to paragraph (a) of this section (17 CFR 260.10a–5).

(d) Each trustee eligible for appointment under this section (17 CFR 260.10a–5) shall file as part of the registration statement for the securities to which the trusteeship relates a consent to service of process and power of attorney on Form F–X [§ 269.5 of this chapter].

Part 269—Forms Prescribed Under the Trust Indenture Act of 1939

71. The authority citation for part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss.

72. By redesignating existing §§ 269.5, 269.6 and 269.7 as 269.6, 269.7 and 269.8; and adding a new § 269.5 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 269.5 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249. 240f of this chapter), or by any issuer or other non-U.S. 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), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239. 37 of this chapter), F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

73. By revising Item 16 of Form T–1 (§ 269. 1) to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form T–1

* * * * *

Item 16. List of exhibits.

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to Rule 7a–29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. 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 exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If an applicable exhibit is not in English, a translation in English shall also be filed. In response to Exhibit 7, foreign trustees shall provide financial information sufficient to provide the information required by Section 310(a) (2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.

5. A copy of each indenture referred to in Item 4, if the obligor is in default.

6. The consents of United States institutional trustees required by Section 321(b) of the Act.

7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. A copy of any order pursuant to which the foreign trustee is authorized to act as sole trustee under indentures qualified or to be qualified under the Act.

9. Foreign trustees are required to file a consent to service of process on Form F–X (§ 269. 5 of this chapter).

* * * * *

74. By revising Item 16 of Form T–6 (§ 269.9) to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form T–6

* * * * *

Item 16. List of exhibits.

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to Rule 7a–29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. 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 exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If the applicable exhibit is not in English, a translation in English shall also be filed. In response to Exhibit 7, foreign trustees should provide financial information sufficient to provide the information required by section 310(a)(2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.

5. A copy of each indenture referred to in Item 4, if the obligor is in default.

6. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

7. Trustee's consent to service of process on Form F–X [§ 269. 5 of this chapter].

8. Copies of applicable statutes, rules, regulations, and the administrative interpretations of those provisions affecting (a) substantial equivalency of regulation with respect to supervision or examination of the trustee in the foreign jurisdiction to that of trustees subject to

the jurisdiction of the laws of the United States, any State, Territory, or the District of Columbia; and (b) eligibility of United States persons to act as sole indenture trustees in the foreign jurisdiction.

* * * * *

By the Commission.

Dated: June 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

Note: These Appendices will not appear in the Code of Federal Regulations.

APPENDIX A—New Forms Under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939

FORM F–7
FORM F–8
FORM F–9
FORM F–10
FORM F–80
FORM 40–F
FORM F–X

Securities and Exchange Commission
Washington, DC 20549

Form F–7

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I. R. S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

---

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instruction II. F. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

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 the Registrant's securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the number of securities held by them as of the record date for the rights offer.

B. Form F–7 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer; and

(3) has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

C. If the Registrant is a successor Registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of I. B. (3) above if: (1) The time the successor Registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor Registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the Registrant, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the Registrant as being located in the United States.

E. This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. The Rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in this Form. Instead, the rules and regulations applicable in the home jurisdiction regarding form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five 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 amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a posteffective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file number[s] of previous registration statement[s]]. "

E. 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.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

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 outstanding 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 securities shall be the average of the high and low prices reported or the average of the bid and asked price of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

G. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

H. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.I. of Form F–7; File No. 33-[insert number of the registration statement]. "

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act

A. Pursuant to Rule 12h–4 under the Securities Exchange Act of 1934 (the "Exchange Act"), a Registrant shall be exempt from reporting obligations under section 15(d) of the Exchange Act if such reporting obligations would have arisen solely from registration of securities on this Form. The Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6, 10b–7 and 10b–8 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on financial statements included in this registration statement.

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 used to offer the rights and underlying securities to holders in any Canadian jurisdiction. Such disclosure document(s) shall include all information used to make such offers, without regard to whether such information has previously been provided to shareholders. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

Such prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure documents used in Canada and not required to be delivered to securityholders pursuant to Canadian law.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and are subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized

under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be 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) Any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the Registrant, must be made publicly available in connection with the transaction.

(2) Copies of any documents incorporated by reference into the registration statement, and any publicly available documents filed with any other Canadian 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 manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written 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 amendment pursuant to a power of attorney, manually signed copies of such power of attorney and, 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 or similar governing body authorizing such signature.

(5) A copy of any indenture relating to the registered securities.

Part III—Consent to Service of Process

(a) At the time of filing Form F–7, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of the agent for service of the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

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_____, Country of_____, on_____ (date), ____.

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.

Securities and Exchange Commission
Washington, DC 20549

Form F–8

Registration Statement Under the Securities Act of 1933

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English (if applicable))

_____

(Province or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number (if applicable))

_____

(I.R.S. Employer Identification Number (if applicable))

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public_____.

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instructions IV.F.–IV.H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. General Eligibility Requirements for Use of Form F–8

A. Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

C. This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

D. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of securities to be exchanged (the "subject securities") for securities of the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F–8 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer;

(3) has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the Registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

B. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

C. In the case of an exchange offer, if the Registrant is a successor Registrant subsisting after a business combination, the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of II. A. (3) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor Registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 25 percent of the class of subject securities outstanding shall be held by U. S. holders.

Instructions

1. For purposes of exchange offers, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 25 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges, NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 25 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S.

ownership equals or exceeds 25 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U. S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F–8 is available if:

(1) Each company participating in the business combination, including the successor Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor Registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor Registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

B. In the case of a business combination, less than 25 percent of the class of securities to be offered by the successor Registrant shall be held by U. S. holders, as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U. S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U. S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

C. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

IV. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five 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 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 amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

E. 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.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with

securities registered pursuant to Form F–8 or to transactions in said securities.

(b) In the case of an exchange offer, Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchases of the Registrant's securities or of the subject issuer's securities during the exchange offer. Such information shall be set forth in amendments to this Form.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–8, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–8, any non-U. S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

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 _____, Country of _____, on ____ (date),____ .

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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission
Washington, DC 20549

Form F–9

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(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 in the United States)

Approximate date of commencement of proposed sale of the securities to the public _____

(Principal jurisdiction regulating this offering)

It is proposed that this filing shall become effective (check appropriate box)

A. [ ] upon filing with the Commission pursuant to Rule 467(a) (if in connection with an offering being made contemporaneously in the United States and Canada) .

B. [ ] at some future date (check the appropriate box below)

1. [ ] pursuant to Rule 467(b) on _____ (date) at _____ (time) (designate a time not sooner than 7 calendar days after filing) .
2. [ ] pursuant to Rule 467(b) on _____ date) at _____ (time) (designate a time 7 calendar days or sooner after filing) because the securities regulatory authority in the review jurisdiction has issued a receipt or notification of clearance on _____ (date).
3. [ ] pursuant to Rule 467(b) as soon as practicable after notification of the Commission by the Registrant or the Canadian securities regulatory authority of the review jurisdiction that a receipt or notification of clearance has been issued with respect hereto.
4. [ ] after the filing of the next amendment to this Form (if preliminary material is being filed).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instructions II.G.–II.H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

If it is proposed that this filing become effective pursuant to Rule 467(b), the following legend shall appear on the cover page of this Form:

"The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to section 8(a) of the Act, may determine."

General Instructions

I. Eligibility Requirements for Use of Form F–9

A. Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or investment grade preferred securities that are: (1) Offered for cash or in connection with an exchange offer; and (2) either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in E. below, are thereafter only convertible into a security of another class of the issuer.

Instruction Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") 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.

B. Form F–9 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form, and is currently in compliance with such obligations;

(4) has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more;

provided, however, that the requirements set forth in B.(4) and B.(5) above shall not apply if the securities being registered on this Form are not convertible into another security.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

C. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of securities to be exchanged (the "subject securities") for the securities of the Registrant.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

Instructions

1. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

E. If the Registrant is a majority-owned subsidiary offering debt securities or preferred shares, it shall be deemed to meet the requirements of I.B. (3), (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.B. above, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

F. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement, or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month reporting requirement of I.B.(3) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

G. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

H. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. A registration statement on this Form, and any amendment thereto, shall become effective in accordance with Rule 467 under the Securities Act.

B. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

C. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

D. Five 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 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 amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As

provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file number[s] of previous registration statement[s]]."

F. 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.

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

H. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported 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.

I. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.K. of Form F–9; File No. 33—[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

L. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

III. Compliance With Exchange 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 (and the requirements of Regulation 15D thereunder) arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Forms 40–F and 6–K, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6 and 10b–7 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–8, Form F–9, Form F–10 or Form F–80 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. 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 hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e–4(g) 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 in connection with exchange offers; *provided that,* if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) or 14(e) of the Exchange Act or Rule 10b–5, 13e–4(b)(1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer securities in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s).

In all other cases, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in the principal jurisdiction (or, if

the offering is not being made contemporaneously in Canada, as if the offering were made in such jurisdiction). Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

Such prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) pursuant to Canadian law or to offerees or purchasers (in all other cases) pursuant to the laws of the principal jurisdiction.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); and (v) certificates of the issuer or any underwriters.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3-2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U. S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer, any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer, must be made publicly available by the Registrant in connection with the transaction.

(2) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(3) In connection with an exchange offer, a copy of any agreement relating to the proposed acquisition.

(4) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with the principal jurisdiction or any other Canadian regulatory authority concurrently with the prospectus.

(5) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written 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.

(6) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, 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 or similar governing body authorizing such signature.

(7) A copy of any indenture relating to the registered securities.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

This Form shall set forth the following undertaking of the Registrant:

Item 1. Undertaking

The 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.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–9, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–9, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

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 _____, Country of _____, on _____ (date), _____.

Registrant— _____

By (Signature and Title)— _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Name and Title)

(Date)

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

C. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

D. Where eligibility for use of this Form is based on the assignment of a security rating, the Registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the Registrant reasonably believes, and so states, that the security rating requirement will be met by the time of effectiveness.

Securities and Exchange Commission
Washington, D.C. 20549

Form F-10

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public _____

(Principal jurisdiction regulating this offering (if applicable))

It is proposed that this filing shall become effective (check appropriate box)

A. [ ] upon filing with the Commission, pursuant to Rule 467(a) (if in connection with an offering being made contemporaneously in the United States and Canada) .

B. [ ] at some future date (check the appropriate box below)

1. [ ] pursuant to Rule 467(b) on *(date)* at *(time)* (designate a time not sooner than 7 calendar days after filing) .
2. [ ] pursuant to Rule 467(b) on *(date)* at *(time)* (designate a time 7 calendar days or sooner after filing) because the securities regulatory authority in the review jurisdiction has issued a receipt or notification of clearance on *(date)*.
3. [ ] pursuant to Rule 467(b) as soon as practicable after notification of the Commission by the Registrant or the Canadian securities regulatory authority of the review jurisdiction that a receipt or notification of clearance has been issued with respect hereto.
4. [ ] after the filing of the next amendment to this Form (if preliminary material is being filed).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instructions II.G.–II.I. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

If it is proposed that this filing become effective pursuant to Rule 467(b) , the following legend shall appear on the cover page of this Form:

"The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective

date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to section 8(a) of the Act, may determine."

General Instructions

I. General Eligibility Requirements for Use of Form F-10

A. Form F-10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

B. This Form may not be used for registration of derivative securities except: (1) warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and (2) convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

C. Form F-10 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however,* that in case of a business combination, each participating company other than the successor Registrant must meet such 36-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement;

(4) has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *provided, however,* that in the case of a business combination, the aggregate market value of the outstanding shares of each participating company other than the successor Registrant is (CN) $360 million or more, except that any such participating company shall not be required to meet such market value requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such market value requirement; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor Registrant is (CN) $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; *provided further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-9, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, 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.

D. In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

E. In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

F. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

G. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

H. With respect to registration of debt securities or preferred securities on this Form, if the Registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of I.C. (3), (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.C. above and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

I. If the Registrant is a successor Registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of I.C. (3) above if: (1) The time the successor Registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that

any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

J. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

K. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. A registration statement on this Form, and any amendment thereto, shall become effective in accordance with Rule 467 under the Securities Act.

B. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the Form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

C. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

D. Five 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 amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

F. 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.

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

H. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported 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.

I. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of a predecessor's equity securities shall be the average of the high and low prices reported or the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

J. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

K. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

L. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering

procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right hand corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.L. of Form F–10; File No. 33—[insert number of the registration statement]. "

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

M. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

III. Compliance with Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d–4 under the Securities Exchange Act of 1934 (the "Exchange Act") , reporting obligations under section 15(d) of the Exchange Act (and the requirements of Regulation 15D thereunder) arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Forms 40–F and 6–K, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) and Rules 10b–6 and 10b–7 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–8, Form F–9, Form F–10 or Form F–80 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by item 3 of part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e–4(g) 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 in connection with exchange offers; *provided that,* if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) and 14(e) of the Exchange Act or Rule 10b–5, 13e–4(b) (1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

Part I—Information Required To Be Delivered to Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents used to solicit votes of security holders in connection with the proposed business combination in any Canadian jurisdiction. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer securities in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

In all other cases, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, as if the offering were made in such jurisdiction). Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or to securityholders being solicited (in the case of a business combination) pursuant to Canadian law or to offerees or purchasers (in all other cases) pursuant to the laws of the principal jurisdiction.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Additional Information

The following information also shall be provided to offerees as part of the prospectus.

Financial Statements

If this Form is filed prior to July 1, 1993, any financial statements included in the home jurisdiction document must be reconciled to U.S. GAAP as required by Item 18 of Form 20–F under the Exchange Act.

Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies. "

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker therete) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 4. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3-2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 5. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information not Required To Be Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer or business combination, any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer or, in the case of a business combination, in accordance with the requirements of the jurisdiction(s) of incorporation or organization of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) In the case of an exchange offer or a business combination, a copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(4) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with the principal jurisdiction or any other Canadian regulatory authority concurrently with the prospectus.

(5) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written 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.

(6) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, 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 or similar governing body authorizing such signature.

(7) A copy of any indenture relating to the registered securities.

Part III—Undertaking and Consent to Service of Process

Item 1. Undertaking

This Form shall set forth the following undertaking of the Registrant:

The 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.

Item 2. Consent to Service of Process

(a) At the time of filing Form F-10, the Registrant shall file with the Commission a

written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–10, any non-U. S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

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 _____, Country of _____, on _____, ____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents 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 of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Securities and Exchange Commission
Washington, DC 20549

Form F–80

Registration Statement Under the Securities Act of 1933

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English (if applicable))

_____

(Province or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number (if applicable))

_____

(I. R. S. Employer Identification Number (if applicable))

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

_____

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

CALCULATION OF REGISTRATION FEE*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instructions IV. F.—IV. H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. General Eligibility Requirements for Use of Form F–80

A. Form F–80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

C. This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

D. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F–80 is available to any Registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12

calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the Registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

B. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

C. In the case of an exchange offer, if the Registrant is a successor Registrant subsisting after a business combination, the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of II. A. (3) above if: (1) the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 40 percent of the class of subject securities outstanding shall be held by U.S. holders.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges, NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F–80 is available if:

(1) each company participating in the business combination, including the successor Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) each company participating in the business combination other than the successor Registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) the aggregate market value of the public float of the outstanding equity shares of each company participating in the business

combination other than the successor Registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

B. In the case of a business combination, less than 40 percent of the class of securities to be offered by the successor Registrant shall be held by U. S. holders, as if measured immediately after completion of business combination.

Instructions

1. For purposes of business combinations, the term "U. S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U. S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

C. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

IV. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five 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 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 amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]. "

E. 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.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U. S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported 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.

H. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of a predecessor's equity securities shall be the average of the high and low prices reported or the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

I. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a

substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction IV. K. of Form F–80; File No. 33-[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

V. Compliance With Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 12h–4 under the Exchange Act, a Registrant shall be exempt from reporting obligations under section 15(d) of the Exchange Act if such reporting obligation would have arisen solely from registration of securities on this Form. 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 Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from Rules 10b–6 and 10b–13.]

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–8, Form F–9, Form F–10 or Form F–80 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. 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 hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e–4(g) 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 in connection with exchange offers, *provided that,* if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) or 14(e) of the Exchange Act or Rule 10b–5, 13e–4(b) (1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in any Canadian jurisdiction. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents used to solicit votes of security holders in connection with the proposed business combination in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents(s) shall be prepared in accordance with the disclosure requirements of the jurisdiction(s) governing such solicitation as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into the disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or securityholders being solicited (in the case of a business combination) pursuant to Canadian law.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution) ; (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers) ; or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and, thus, may not be comparable to financial statements of United States companies. "

"Prospective investors should be aware that acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein. "

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States. "

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer or, in the case of business combination, in accordance with the requirements of the jurisdiction(s) of incorporation or organization of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) A copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with any other Canadian 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 registration statement, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement 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 pursuant to power of attorney, manually signed copies of such power of attorney and, 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 or similar governing body authorizing such signature.

(6) A copy of any indenture relating to the registered securities.

PART III—UNDERTAKINGS AND CONSENT TO SERVICE OF PROCESS

Item 1. Undertakings

This Form shall set forth the following undertakings of the Registrant:

(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–80 or to transactions in said securities.

(b) In the case of an exchange offer, Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchases of the Registrant's securities or of the subject issuer's securities during the exchange offer. Such information shall be set forth in amendments to this Form.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–80, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–80, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

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–80 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, Country of _____, on _____ (date), ____.

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–80 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Securities and Exchange Commission

Washington, D.C. 20549

Form 40–F

[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

For the fiscal year ended _____

Commission File Number _____

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class

Name of each exchange on which registered

Securities registered or to be registered pursuant to Section 12(g) of the Act.

(Title of Class)

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

(Title of Class)

For annual reports, indicate by check mark the information filed with this Form:

[ ] Annual information form

[ ] Audited annual financial statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

Indicate by check mark whether the Registrant by filing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 (the "Exchange Act") . If "Yes" is marked, indicate the file number assigned to the Registrant in connection with such Rule.

Yes_____82–_____No_____

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes_____No_____

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 Exchange Act and Rule 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, F–10 or F–80 under the Securities Act of 1933 (the "Securities Act") .

Note: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F–7, F–8 or F–80 if the issuer, at the time of filing such Form, is exempt from the requirements of Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). See Rule 12h–4 under the Exchange Act.

(2) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 thereunder, and to file reports with the Commission pursuant to Section 15(d) of the Exchange Act if: (i) The Registrant is incorporated or organized under the laws of Canada or any Canadian province or territory; (ii) the Registrant is a foreign private issuer or a crown corporation; (iii) the Registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form and is currently in compliance with such obligations; (iv) the aggregate market value of the outstanding equity shares of the Registrant is: (a) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or (b) (CN) $360 million or more in all other cases; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and (v) the aggregate market value of the public float of such equity shares is (CN) $75 million or more; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If the Registrant is a successor Registrant subsisting after a business

combination, it shall be deemed to meet the 36-month reporting requirement of A. (2)(iii) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(4) This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

B. Information To Be Filed on this Form

(1) Except as hereinafter noted, Registrants registering securities under sction 12 shall file with the Commission on this Form all information material to an investment decision that the Registrant, since the beginning of its last full fiscal year: (i) Made or was required to make public pursuant to the law of any Canadian jurisdiction, (ii) filed or was required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributed or was required to distribute to its securityholders. A list of all documents filed with the Commission as a part of the registration statement shall be set forth in or attached as an exhibit to the Form.

(2) Unless otherwise furnished in information provided pursuant to General Instruction B.(1) , all registration statements on this Form shall include that portion of its home jurisdiction reports, forms or listing applications containing a description of the securities to be registered.

(3) Registrants reporting pursuant to section 13(a) or 15(d) of the Exchange Act should file under cover of this Form the annual information form required under Canadian law and the Registrant's audited annual financial statements and accompanying management's discussion and analysis. All other information material to an investment decision that a Registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile, (ii) files or is required to file with a stock exchange on which its securities are traded or (iii) distributes or is required to distribute to its securityholders shall be furnished by Registrants under cover of Form 6-K.

(4) Information contained in registration statements and reports on this Form shall be in the English language.

(5) If a report filed on this Form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and filed with this Form.

C. Compliance With Auditor Independence and Reconciliation Requirements

(1) The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement or annual report, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in a registration statement under the Securities Act filed by the issuer on Form F-8, Form F-9, Form F-10 or Form F-80 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

(2) If this Form is filed prior to July 1, 1993, any financial statements, other than interim financial statements, included in this Form by registrants registering securities pursuant to section 12 of the Exchange Act or reporting pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act must be reconciled to U.S. GAAP as required by Item 17 of Form 20-F under the Exchange Act, unless this Form is filed with respect to securities that would be eligible for registration under the Securities Act on Form F-9, in which case no such reconciliation is 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-80, in which case no such reconciliation is required.

D. Application of General Rules and Regulations

(1) Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 under the Exchange Act shall not apply to filings on this Form. The rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Exchange Act rules and regulations other than Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 shall apply to filings on this Form unless specifically excluded in this Form. Pursuant to Rule 13a-3, an eligible registrant that files reports on Form 40-F and Form 6-K is deemed to satisfy the requirements of Regulation 13A under the Exchange Act.

(2) A registration statement on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date.

(3) An annual report on this Form or any amendment thereto shall be filed the same day the information included therein is due to be filed with any securities commission or equivalent regulatory authority in Canada.

(4) A registration statement filed pursuant to section 12 of the Exchange Act on this Form shall become effective in accordance with section 12(d) and Rule 12b-6 or section 12(g)(1) of such Act, as applicable.

(5) In accordance with Rule 0-11 under the Exchange Act, at the time of filing a registration statement or annual report pursuant to sections 12, 13(a) or 15(d) on this Form, the Registrant shall pay to the Commission in U.S. dollars a fee in the amount specified in Rule 12b-7, Rule 13a-1 or Rule 15d-1 under the Exchange Act, as applicable.

(6) Rule 12b-20, which provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

(7) Pursuant to Rule 12b-15, all amendments to this Form shall be filed under cover of Form 8.

(8) Five copies of the complete registration statement or report, including exhibits, 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 or report, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

(9) At least one copy of every registration statement or report filed on this Form shall be signed manually by an authorized officer of the Registrant. Unsigned copies shall be conformed.

(10) 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 registration statement or annual report, or is named as having prepared or certified a report or valuation for use in connection with the registration statement or annual report, the manually signed, written consent of such person shall be filed.

If any person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement or annual report, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement or annual report, the manually signed, written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

Any other consent required by Rule 12b-36 also shall be filed. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the

certifying accountant to the use of such accountant's certificate in connection with the amended financial statements in the registration statement or annual report 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.

Undertaking and Consent to Service of Process

A. Undertaking

This Form shall set forth the following undertaking of the Registrant:

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 40–F; the securities in relation to which the obligation to file an annual report on Form 40–F arises; or transactions in said securities.

B. Consent to Service of Process

(1) Registrants registering securities on this Form, and Registrants filing annual reports on this Form who have not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

(2) Any change to the name or address of a Registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the Registrant.

Signatures

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40–F and has duly caused this registration statement [annual report] to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant _____

By (Signature and Title) _____

Date _____

Instructions

A. The name and title of the officer who signs the registration statement or annual report shall be typed or printed beneath such person's signature. Any such person who occupies more than one position shall indicate each capacity in which the registration statement is signed.

B. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any purchases or sales of any security registered pursuant to Form 40–F on the securities in relation to which the obligation to file an annual report on Form 40–F arises, or transactions in said securities, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U. S. Securities and Exchange Commission

Washington, DC 20549

Form F–X

Appointment of Agent for Service of Process

General Instructions

I. Form F–X shall be filed with the Commission:

(a) by any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) by any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934 (the "Exchange Act");

(c) by any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

A Form F–X filed in conjunction with any other Commission form should not be bound together with or be included only as an exhibit to, such other form.

II. Six copies of the Form F–X, one of which must be manually signed, shall be filed with the Commission at its principal office.

A. Name of issuer or person filing ("Filer"):

_____

B. This is [check one]

[ ] an original filing for the Filer

[ ] an amended filing for the Filer

C. Identify the filing in conjunction with which this Form is being filed:

Name of registrant _____

Form type _____

File Number (if known) _____

Filed by _____

Date Filed (if filed concurrently, so indicate)

_____

D. The Filer 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 and telephone number)

_____

_____

E. The Filer designates and appoints (Name of United States person serving as agent) _____ ("Agent") located at (Address in full in the United States and telephone number)

_____

_____

as the agent of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in

(a) Any investigation or administrative proceeding conducted by the Commission; and

(b) Any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered by the Filer on Form (Name of form) _____ on (Date) _____ or any purchases or sales of any security in connection therewith; (ii) the securities in relation to which the obligation to file an annual report on Form 40–F arises, or any purchases or sales of such securities; (iii) any tender offer for the securities of a Canadian issuer with respect to which filings are made by the Filer with the Commission on Schedule 13E–4F, 14D–1F or 14D–9F; or (iv) the securities in relation to which the Filer acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act of 1939. The Filer stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

F. Each person filing this Form in connection with the use of Form F–9, F–10, or 40–F or Schedule 13E–4F, 14D–1F or 14D–9F stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act. Each person filing this Form in connection with the use of Form F–8 or Form F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F–8 or Form F–80. Each person filing this Form in connection with its status as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding. Each Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

The Filer 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 _____ Country of _____ this _____ day of _____.

Filer: _____

_____

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 the Filer and its authorized Agent in the United States.

2. The name of each person who signs Form F–X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F–X. Each copy shall be manually signed. If any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of Form F–X. If any name is signed pursuant to a power of attorney, a manually signed copy of the power of attorney shall be filed with each copy of Form F–X.

Appendix B Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: Forms F–7, F–8, F–9, F–10 and F–80 under the Securities Act of 1933 (the "Securities Act"); Form 40–F and Schedules 14D–1F, 14D–9F and 13E–4F under the Securities Exchange Act of 1934 (the "Exchange Act"); Form F–X under the Securities Act, the Exchange Act and the Trust Indenture Act of 1939 (the "Trust Indenture Act"); Rule 467, changes to Rules 158, 175, 424, 473 and 502, and changes to Forms S–2, S–3, S–4, S–8, S–11, F–1, F–2, F–3 and F–4 under the Securities Act; Rules 13a–3, 13e–4(h), 14d–1(b), 14e–2(c), 15d–4, and 15d–5(c), changes to Rules 3a12–3(b), 3b–6, 12g–3, 12g3–2, 13a–10, 13a–16, 15d–5(b), 15d–10 and 15d–16, and changes to Forms 20–F, 10–K and 6–K under the Exchange Act; Rules 4d–9 and 10a–5 and changes to Rules 0–11 and 10a–4 and Forms T–1 and T–6 under the Trust Indenture Act; changes to Rule 3–01, 3–02, 3–12 and 3–19 under Regulation S–X; changes to Rules 30–1 and 30–3 of the Commission's Rules Delegating Authority to Division Directors; changes to Rule 24 under the Commission's Rules of Practice; and changes to Items 302, 402 and 404 under Regulation S–K, when promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The rules, forms and schedules noted above are intended primarily to facilitate multijurisdictional and cross-border offerings of securities by Canadian issuers. The resulting reduction in the expense, time and effort of making such offerings will benefit Canadian entities that issue securities, rather than U.S. entities. In connection with the multijurisdictional disclosure system, the Securities and Exchange Commission (the "Commission") also is revising existing rules and forms to permit their use by Canadian foreign private issuers, for registration and reporting under the Securities Act and the Exchange Act on an equal basis with all other foreign private issuers. Such revisions also benefit Canadian entities registering securities and reporting with the Commission, rather than U.S. entities.

It is anticipated that the Canadian securities regulatory authorities will propose adoption of rules and policies that will permit the implementation of a corresponding multijurisdictional system permitting U.S. entities to make public offerings and file reports in Canada with disclosure documents prepared according to the requirements of U.S. federal securities law.

An expected result of adoption of the rules, forms and schedules by the Commission is that offerings by Canadian companies will be made in the United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in U.S.-registered offerings by Canadian issuers can be expected to increase ease of investment for small U.S. entities acting as investors. While small U.S. entities raising capital in the United States may experience some increase in competition for such capital from Canadian entities using the multijurisdictional system, that effect is not expected to be significant for a substantial number of U.S. small entities in view of the small increase in total competition that is expected to result. In addition, small U.S. entities who act as financial intermediaries, such as investment banks, can be expected to be affected by the increased number of offerings being made in the United States. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of Canadian issuers; nor are small entities who act as intermediaries more likely than large entities who act in that capacity to be affected by the increase in U.S.-registered offerings. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States.

With respect to shelf offerings, a clarifying change to Rule 424 has been made in connection with the Canadian MJDS in order to ensure that U.S. issuers taking a tranche off the shelf, even if selling only in Canada, file a Rule 424 prospectus with the Commission. Such revision may have a minimal effect on small U.S. entities. Nevertheless, since the amendment is more in the nature of a clarification and most U.S. issuers using the MJDS will be substantial in size, it is not likely that the effect on small U.S. entities will be significant.

The new rules, forms and schedules and the amendments to rules and forms are summarized in the attached memorandum. [1] That their primary effect is on Canadian entities is apparent from such document.

Dated: June 13, 1991.

Richard C. Breeden,

Chairman

[1] The above-referenced memorandum is not included in this release.

APPENDIX C.—MJDS CONTINUOUS DISCLOSURE OBLIGATIONS

Type of Issuer	§ 15(d)	§ 12(g)		§ 12(b)
		Non-NASDAQ	NASDAQ	
Form F–7 filer	None [1]	Rule 12g3–2(b) exemption [2]	20–F & 6–K	20–F & 6–K
Form F–8 filer	None [1]	Rule 12g3–2(b) exemption [2]	20–F & 6–K	20–F & 6–K
Form F–80 filer	None [1]	Rule 12g3–2(b) exemption [2]	20–F & 6–K	20–F & 6–K
Form F–9 filer	40–F & 6–K [1]	Rule 12g3–2(b) exemption [2]	40–F & 6–K [3]	40–F & 6–K [3]
Form F–10 filer	40–F & 6–K [1]	Rule 12g3–2(b) exemption [2]	40–F & 6–K	40–F & 6–K
Form F–9 eligible	40–F & 6–K	Rule 12g3–2(b) exemption [2]	40–F & 6–K [3]	40–F & 6–K [3]
Form F–10 eligible	40–F & 6–K	Rule 12g3–2(b) exemption [2]	40–F & 6–K	40–F & 6–K
All other Canadian foreign private issuers.	20–F & 6–K	Rule 12g3–2(b) exemption [2]	20–F & 6–K	20–F & 6–K

[1] With respect to the 15(d) obligation arising from use of the form specified, if the issuer is exempt from reporting under Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). If the issuer is not so exempt, Forms 40–F and 6–K are available for reporting.

[2] Assuming issuer with no section 12(b) obligation or section 15(d) obligation arising from non-MJDS forms.

[3] If section 12 obligation arises only from the Form F–9 eligible securities; otherwise Forms 20–F and 6–K must be filed.

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National Policy Statement No. 45 Multijurisdictional Disclosure System

1. Introduction

The multijurisdictional disclosure system is a joint initiative by the Canadian Securities Administrators and the Securities and Exchange Commission of the United States (the "SEC") to reduce duplicative regulation in cross-border offerings, issuer bids, take-over bids, business combinations and continuous disclosure and other filings.

The multijurisdictional disclosure system implemented in Canada pursuant to this Policy Statement (the "MJDS") is intended to remove unnecessary obstacles to certain offerings of securities of U.S. issuers in Canada and to facilitate take-over and issuer bids and business combinations involving securities of U.S. issuers having less than a specified percentage of Canadian security holders, while ensuring that Canadian investors remain adequately protected.

The MJDS permits public offerings of securities of U.S. issuers that meet specified eligibility requirements to be made in Canada on the basis of disclosure documents prepared in accordance with the laws of the United States (with certain additional Canadian disclosure). A public offering of securities of a U.S. issuer may be made under the MJDS both in Canada and the United States or in Canada only.

The MJDS also reduces disincentives to the extension to Canadian security holders of rights offerings by U.S. issuers by permitting such rights offerings to be made in Canada on the basis of U.S. disclosure documents. Similarly, it facilitates the extension to Canadian security holders of U.S. issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by this Policy Statement. The MJDS permits such transactions to be made in Canada generally in the same manner as in the United States and on the basis of U.S. disclosure documents.

Regulatory review of disclosure documents used under the MJDS for offerings made by a U.S. issuer both in Canada and the United States will be that customary in the United States, with the SEC being responsible for carrying out the review. Canadian securities regulatory authorities will monitor materials filed under the MJDS in order to check compliance with the specific disclosure and filing requirements of this Policy Statement. In addition, the substance of the disclosure documents will be reviewed in the unusual case where, through monitoring of the materials or otherwise, the Canadian securities regulatory authorities have reason to believe that there may be a problem with a transaction or the related disclosure or other special circumstances exist.

The MJDS does not change the liability provisions of the securities laws of any province or territory or the discretionary authority of a Canadian securities regulatory authority to halt a distribution, remove an exemption, cease trade the related securities, or refuse to issue a receipt for a preliminary prospectus or prospectus. The Canadian securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

Use of the MJDS is based on compliance with U.S. law. Thus, any person or company doing a transaction or filing a document in Canada under the MJDS must comply in full with all applicable U.S. requirements. However, violation of a U.S. requirement will not automatically disqualify a person or company from using the MJDS with respect to a transaction or document. Instead, a person or company that violates a U.S. requirement may, depending upon the circumstances, be considered to have violated an equivalent requirement of a Canadian jurisdiction with respect to the transaction or document.

Concurrently with the adoption of this Policy Statement, the SEC is adopting rules, forms and schedules for the implementation of a similar multijurisdictional disclosure system in the United States. The U.S. system removes unnecessary impediments to certain offerings of securities of Canadian issuers in the United States and facilitates the extension to U.S. security holders of Canadian issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by the U.S. system.

The procedures to be followed in Canada when the U.S. system is used for a U.S.-only offering of securities of a Canadian issuer are set out in section 7.

2. Definitions

As used in this Policy Statement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

(1) *Affiliate,* with respect to an issuer, means a person or company that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the issuer;

(2) *Applicable Canadian securities legislation* means the securities legislation of each Canadian province and territory in which securities are offered, or a bid is made, under this Policy Statement;

(3) *Applicable securities regulatory authority* means the securities regulatory authority in each Canadian province and territory in which securities are offered, or a bid is made, under this Policy Statement;

(4) *Approved Rating,* with respect to debt or preferred shares, means a provisional rating by an Approved Rating Organization in one of the categories applicable thereto, as set out below opposite the Approved Rating Organization's name:

Approved rating organization	Debt	Preferred shares
C.B.R.S. Inc.	A++, A+, A or B++.	P-1+, P-1, P-2 or P-3.
Dominion Bond Rating Service Limited.	AAA, AA, A or BBB.	Pfd-1, Pfd-2 or Pfd-3.
Moody's Investors Service, Inc.	Aaa, Aa, A or Baa.	"aaa," "aa," "a" or "baa".
Standard & Poor's Corporation.	AAA, AA, A or BBB.	AAA, AA, A or BBB.

(5) *Approved Rating Organization* means each of C.B.R.S. Inc., Dominion Bond Rating Service Limited, Moody's Investors Service, Inc. and Standard & Poor's Corporation;

(6) *Bid* means a take-over bid or an issuer bid;

(7) *Bid circular*, in respect of the application of this Policy Statement in a province or territory, means a take-over bid circular or an issuer bid circular as those terms are used in the securities legislation of such province or territory, consisting, for purposes of this Policy Statement, of the tender offer materials used in the United States, as modified pursuant to section 4.5;

(8) *Business combination* means a statutory merger or consolidation or similar plan or acquisition requiring the vote or consent of security holders of a company or person, in which securities of such company or person or another company or person held by such security holders will become or be exchanged for securities of any other company or person;

(9) *Canadian GAAP* means the accounting principles generally accepted in Canada, and, where a principle is recommended in the Handbook of the Canadian Institute of Chartered Accountants which is applicable in the circumstances, means such principle;

(10) *Commodity pool issuer* means an issuer formed and operated for the purpose of investing in commodity futures contracts, commodity futures and/or related products;

(11) *Company*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(12) *Conflicts Rules* has the meaning assigned thereto in Section 3.12;

(13) *Connected issuer* or *Connected party*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the Conflicts Rules of such province or territory;

(14) *Control*, with respect to an issuer, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the issuer, whether through the ownership of voting securities, by contract or otherwise, and "under common control with" shall be construed accordingly;

(15) *Convertible*, with respect to debt or preferred shares, means that the rights and attributes attaching to such securities include a right or option to purchase, convert or exchange or otherwise acquire any equity shares of the issuer or of any other issuer (or any debt or preferred shares not having an Approved Rating in the case of debt or preferred shares having an Approved Rating), or any other security which itself has a right to purchase, convert or exchange or otherwise acquire any equity shares of the issuer or any other issuer (or any debt or preferred shares not having an Approved Rating in the case of debt or preferred shares having an Approved Rating), "convert" shall be construed accordingly, and "non-convertible" means securities that are not convertible;

(16) *Equity shares*, with respect to an issuer, means common shares, non-voting equity shares and subordinate or restricted voting equity shares of the issuer, but excludes preferred shares;

(17) *Foreign issuer* means an issuer that is not incorporated or organized under the laws of Canada or a province or territory of Canada, except where:

(a) Voting securities carrying more than 50% of the votes for the election of directors are held by persons or companies whose last address as shown on the books of the issuer is in Canada; and

(b) either:

(i) The majority of the senior officers or directors of the issuer are citizens or residents of Canada;

(ii) More than 50% of the assets of the issuer are located in Canada; or

(iii) The business of the issuer is administered principally in Canada;

(18) *Independent underwriter*, in respect of the application of this Policy Statement in a province or territory, means a dealer that is not the issuer and in respect of which the issuer is not a related party or related issuer or connected party or connected issuer or, where the dealer is not a registrant in such province or territory, would not be a connected party or connected issuer if the dealer were a registrant;

(19) *Insider bid*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(20) *International Accounting Standards* means the accounting principles issued by the International Accounting Standards Committee;

(21) *Issuer*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(22) *Issuer bid*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(23) *Majority-owned subsidiary* means a person or company of which voting securities carrying more than 50% of the votes for the election of directors are held by (i) another person or company and (ii) the other majority-owned subsidiaries of that other person or company;

(24) *Market value*, with respect to a class of securities, means the aggregate market value of such securities, calculated by using the price at which such securities were last sold in the principal market for such securities on the date specified in the applicable provision of this Policy Statement, or the average of the bid and asked prices of such securities in such market on such date if there were no sales on such date and, where there is no market for such class of securities, it means the book value of such securities computed on such date, provided that if the issuer of such class of securities is in bankruptcy or receivership or has an accumulated capital deficit, it means one-third of the principal amount, par value or stated value of such class of securities;

(25) *Method 1* means the first of the two alternative methods of providing prospectus certificates for Rule 415 Offerings made under the MJDS described in Section 3.11(2);

(26) *Method 2* means the second of the two alternative methods of providing prospectus certificates for Rule 415 Offerings made under the MJDS described in Section 3.11(2);

(27) *MJDS* means the multijurisdictional disclosure system rules and procedures set forth in Sections 1–6 of this Policy Statement;

(28) *MTN Program* means a continuous Rule 415 Offering of debt in which the specific variable terms of the individual securities and the offering thereof are determined at the time of sale;

(29) *NASDAQ* means the National Association of Securities Dealers Automated Quotation System;

(30) *NASDAQ NMS* means the National Market System of NASDAQ;

(31) *Offeree issuer* means an issuer whose securities are the subject of a bid;

(32) *Offeror*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(33) *Parent*, with respect to a majority-owned subsidiary, means a person or company that, together with the parent's other majority-owned subsidiaries, holds voting securities of the majority-owned subsidiary carrying more than 50% of the votes for the election of directors;

(34) *Person*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(35) *Principal market*, with respect to a class of securities, means the single securities market with the largest aggregate trading volume for the class of securities in the preceding 12 calendar month period;

(36) *Principal jurisdiction* means the principal jurisdiction selected in accordance with section 3.8(2);

(37) *Public float*, with respect to a class of securities, means the aggregate market value of such securities held by persons or companies that are not affiliates of the issuer of such securities, calculated by using the price at which such securities were last sold in the principal market for such securities on the date specified in the applicable provision of this Policy Statement, or the average of the bid and asked prices of such securities in such market on such date, and where there is no market for such class of securities, it means the book value of such securities held by persons or companies that are not affiliates of the issuer of such securities computed on

such date, provided that if the issuer of such class of securities is in bankruptcy or receivership or has an accumulated capital deficit, it means one-third of the principal amount, par value or stated value of such securities held by persons or companies that are not affiliates of the issuer of such securities;

(38) *Related issuer* or *related party,* in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the Conflicts Rules of such province or territory;

(39) *Review jurisdiction* means the review jurisdiction selected in accordance with section 7;

(40) *Rule 415 Offering* means an offering under Rule 415 under the 1933 Act that is made in Canada pursuant to Section 3.7;

(41) *Rule 430A Offering* means an offering under Rule 430A under the 1933 Act that is made in Canada pursuant to Section 3.7;

(42) *Rule 430A Pricing Prospectus* means a prospectus prepared in connection with a Rule 430A Offering that contains the information omitted from the related registration statement as permitted by Rule 430A under the 1933 Act;

(43) *SEC* means the Securities and Exchange Commission of the United States;

(44) *Securities exchange bid* means a bid for which the consideration for the securities of the offeree issuer consists, in whole or in part, of securities of an offeror or other issuer;

(45) *Securities legislation* in respect of the application of this Policy Statement in a province or territory, means the statutes concerning the regulation of securities markets and trading in securities of such province or territory, the regulations and blanket rulings and orders thereunder, and the policy statements and written interpretations issued by the securities regulatory authority of such province or territory;

(46) *Take-over bid,* in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(47) *U.S. issuer* means a foreign issuer that is incorporated or organized under the laws of the United States or any state or territory of the United States or the District of Columbia;

(48) *Voting securities* means securities the holders of which have a present entitlement to vote for the election of directors;

(49) *1933 Act* means the Securities Act of 1933 of the United States;

(50) *1934 Act* means the Securities Exchange Act of 1934 of the United States: and

(51) *1940 Act* means the Investment Company Act of 1940 of the United States.

Prospectus Offerings by U.S. Issuers

3.1 *General*

The MJDS permits the following types of securities of a U.S. issuer to be distributed by prospectus in Canada, either by the issuer or by a selling security holder, on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure) :

(1) Non-convertible debt and non-convertible preferred shares that have an Approved Rating;

(2) Debt and preferred shares that have an Approved Rating and may not be converted for at least one year after issuance, if the issuer meets a substantiality requirement;

(3) Other securities, if the issuer meets a greater substantiality requirement; and

(4) Certain rights to acquire securities of the issuer.

The availability of the MJDS for rights offerings is discussed in section 3.4(1) , for securities exchange bids in section 4.1 and for business combinations in section 5.1.

The purpose of the "substantiality" requirement is to single out issuers whose size is such that (i) information about them is publicly disseminated and (ii) they have a significant market following. As a result, the marketplace can be expected to set efficiently a price for the securities of these issuers based on publicly available information.

Non-convertible debt and preferred shares that have an Approved Rating are particularly appropriate for the MJDS because these securities trade primarily on the basis of their yield and an assessment of creditworthiness by an independent rating organization. The lack of a "substantiality" requirement for offerings of these securities reflects this and allows the MJDS to be used by issuers of securities having an Approved Rating, such as finance subsidiaries, that access the market frequently, but do not meet the market value and public float requirements.

Debt and preferred shares that have an Approved Rating and are not convertible into other securities for at least one year after issuance can be expected to trade primarily on the basis of their yield and independent rating, but are also priced to some extent on the basis of the anticipated value of the security into which they are convertible. Thus, the MJDS is available for these securities on the basis of their Approved Rating, coupled with a "substantiality" requirement.

In the case of offerings of common shares or other securities other than debt and preferred shares that have an Approved Rating, the MJDS is available upon satisfaction of a greater "substantiality" requirement.

The MJDS may not be used for offerings of derivative securities, except warrants, options, rights or convertible securities where the issuer of the underlying securities to which the warrants, options, rights or convertible securities relate is eligible under this Policy Statement to distribute the underlying securities. Therefore, offerings of derivative securities such as stock index warrants, currency warrants and debt the interest on which is based upon the performance of a stock index may not be made under the MJDS.

All prospectus offerings remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

3.2 *Offerings of Debt or Preferred Shares Having an Approved Rating*

The MJDS may be used for the distribution in Canada of debt that has an Approved Rating or preferred shares that have an Approved Rating or rights that, upon issuance, are immediately exercisable for any such securities, provided that:

(1) The issuer is a U.S. issuer;

(2) The issuer (i) has a class of securities registered pursuant to section 12(b) or 12(g) of the 1934 Act; or (ii) is required to file reports pursuant to section 15(d) of the 1934 Act;

(3) The issuer has filed with the SEC all the material required to be filed pursuant to sections 13, 14 and 15(d) of the 1934 Act for a period of at least 36 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction;

(4) The issuer is not registered or required to be registered as an investment company under the 1940 Act;

(5) The issuer is not a commodity pool issuer; and

(6) The securities being offered or issuable upon the exercise of the rights either:

(a) Are not convertible; or

(b) If convertible, may not be converted for at least one year after issuance, and the equity shares of the issuer of the securities into which the offered securities are convertible have a market value and a public float of not less than U.S. $150,000,000 and U.S. $75,000,000, respectively, determined as of a date that is within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction.

For purposes of this section 3, whether debt or preferred shares have an Approved Rating shall be determined as of the time the preliminary prospectus is filed in the principal jurisdiction.

3.3 Offerings of Other Securities

The MJDS may be used for the distribution in Canada of any securities of an issuer, provided that:

(1) The issuer meets the eligibility requirements specified in sections 3.2(1)–(5) ; and

(2) The equity shares of the issuer have a market value and a public float of not less than U.S. $300,000,000 and U.S. $75,000,000, respectively, determined as of a date that is within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction.

Offerings of debt and preferred shares that are not eligible to be made pursuant to section 3.2, rights offerings that are not eligible to be made pursuant to section 3.4, securities exchange bids that are not eligible to be made pursuant to section 4.2 and business combinations that are not eligible to be made pursuant to section 5.2 may be made pursuant to this section 3.3, provided that (1) and (2) above are satisfied.

3.4 *Rights Offerings*

(1) *General*

Subject to certain limitations, the MJDS permits U.S. issuers to make rights offerings by prospectus to existing security holders in Canada on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure). There is no market value or public float requirement for rights offerings since existing security holders can reasonably be expected to be familiar with the issuer and follow publicly available information concerning it.

The MJDS is available for rights offerings primarily to encourage fair treatment of Canadian investors. Previously, a U.S. issuer might not have extended rights offerings to its security holders in Canada due to the perceived costs and burdens of meeting Canadian regulatory requirements. The MJDS is intended to alter a U.S. issuer's cost-benefit analysis in favour of extending a rights offering to Canadian investors.

(2) *Issuer Eligibility Requirements*

The MJDS may be used for the distribution by an issuer of rights to purchase additional securities of its own issue to its existing security holders in Canada, provided that the issuer:

(a) Meets the eligibility requirements specified in sections 3.2(1)–(5); and

(b) Has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction and is in compliance with the obligations arising from such listing or quotation.

(3) *Limitations on Rights Offerings*

Rights offerings by issuers relying on the eligibility requirements of section 3.4(2) shall be subject to the following limitations:

(a) The rights must be exercisable immediately upon issuance;

(b) Subject to (c) below, the rights issued to residents of Canada have the same terms and conditions as the rights issued to residents of the United States; and

(c) Beneficial ownership of rights issued to a resident of Canada may not be transferable to a resident of Canada (other than residents to whom rights of the same issue were granted), provided that (i) the securities issuable upon exercise of the rights may be so transferable, and (ii) this limitation shall not restrict the transfer of rights on a securities exchange or inter-dealer quotation system outside of Canada.

(4) *Dealer Registration Requirements*

Registration as a dealer is not required by an issuer in respect of a rights offering made under section 3.4. A standby underwriter or dealer manager for a rights offering made under section 3.4 is not required to register as a dealer if it does not engage in soliciting activity in Canada or resell in Canada any securities acquired under the standby underwriting arrangement.

3.5 *Successor Issuers*

A successor issuer subsisting after a business combination shall be deemed to meet the respective eligibility requirements set forth in sections 3.2(3), 3.4(2)(b), 4.4(3) and 5.2(3) if:

(1) Since the business combination the successor issuer has filed all the material required to be filed pursuant to sections 13, 14 and 15(d) of the 1934 Act and, if applicable, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS;

(2) If applicable, the successor issuer is in compliance with the obligations arising from such listing or quotation; and

(3) The filing, listing or quotation requirement to be satisfied for a period of 12 or 36 months is satisfied in respect of each predecessor by separately adding the period during which the successor issuer satisfied the requirement to the immediately preceding period during which the predecessor satisfied the requirement, provided that the 12- or 36-month requirement need not be satisfied with respect to any predecessors whose assets and gross revenues in aggregate contributed less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each predecessor's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed.

3.6 *Alternative Eligibility Requirements for Certain Guaranteed Issues*

An issuer that does not meet the eligibility requirements set forth in section 3.2 or 3.3 may use the MJDS to offer the securities respectively specified in such Sections, subject to the following requirements and limitations:

(1) The securities being offered are:

(a) Non-convertible debt having an Approved Rating or non-convertible preferred shares having an Approved Rating of a majority-owned subsidiary whose parent meets the eligibility requirements set forth in sections 3.2 (1)–(5);

(b) Debt having an Approved Rating or preferred shares having an Approved Rating of a majority-owned subsidiary that may not be converted for at least one year after issuance and are convertible only into securities of a parent that meets the eligibility requirements set forth in sections 3.2 (1)–(5) and (6)(b);

(c) Non-convertible debt or non-convertible preferred shares of a majority-owned subsidiary whose parent meets the eligibility requirements set forth in section 3.3; or

(d) Debt or preferred shares of a majority-owned subsidiary that are convertible only into securities of a parent that meets the eligibility requirements set forth in section 3.3;

(2) The issuer meets the eligibility requirements set forth in sections 3.2 (1), (4) and (5); and

(3) The parent fully and unconditionally guarantees payment in respect of the securities being offered as to principal and interest if such securities are debt and as to liquidation preference, redemption and dividends if such securities are preferred shares.

3.7 *Rule 415 Offerings and Rule 430A Offerings*

The procedures permitted by Rule 415 and Rule 430A under the 1933 Act may be used for offerings of securities under the MJDS. The shelf procedures and post-receipt pricing rules set forth in National Policy Statement No. 44 do not apply to such offerings. A prospectus supplement filed in accordance with the procedures permitted by Rule 415 or Rule 430A shall not be subject to the review procedures set out in section 3.8(3) or the receipt procedures set out in section 3.8(4).

3.8 *Mechanics of Making an Offering*

(1) *General*

In order to use the MJDS to distribute securities in Canada, an issuer that meets the relevant eligibility requirements set forth in this Policy Statement shall prepare a registration statement for the offering for filing with the SEC, the related preliminary prospectus and prospectus for use in Canada and any amendments and supplements thereto in accordance with U.S. disclosure requirements as interpreted and applied by the SEC. The preliminary prospectus and prospectus used in Canada shall contain the additional information, legends and certificates required by this Policy Statement, shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed, and shall contain no untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. The issuer may use either a separate Canadian prospectus or a wrap-around prospectus that includes the prospectus filed with the SEC. The issuer is required to prepare a preliminary prospectus for use in Canada even if the issuer does not prepare a preliminary prospectus for use in the United States.

Notwithstanding the foregoing, a preliminary prospectus, prospectus or amendment or supplement thereto used in Canada need not contain any disclosure relevant solely to U.S. offerees or purchasers, including, without limitation: (i) Any "red herring" legend required by U.S. law; (ii) any legend regarding approval or disapproval by the SEC; (iii) any discussion of U.S. tax considerations other than those material to Canadian purchasers; and (iv) the names of any U.S. underwriters not acting as underwriters in Canada or a description of the U.S. plan of distribution (except to the extent necessary to describe facts material to the Canadian offering). Except as specifically provided in this Policy Statement, such documents are not required to comply with the form and content requirements set forth in applicable Canadian securities legislation.

If the offering is also being made in the United States, one unsigned copy of the registration statement and all amendments and exhibits thereto and one signed and two unsigned copies of the preliminary

prospectus, prospectus and each amendment and supplement thereto used in Canada (together with one copy of all documents incorporated by reference in the prospectus and the supporting documentation required by this Policy Statement) shall be filed in the manner set forth in this Policy Statement with the securities regulatory authority in the principal jurisdiction as nearly as practicable contemporaneously with the filing of the registration statement with the SEC. One signed and one unsigned copy of the preliminary prospectus, prospectus and each amendment and supplement thereto used in Canada (together with one copy of all documents incorporated by reference in the prospectus and the supporting documentation required by this Policy Statement) shall be filed with the other applicable securities regulatory authorities. Such filings shall be made as nearly as practicable contemporaneously with the filing in the principal jurisdiction.

For filings made in Quebec, both English and French language versions of the preliminary prospectus, prospectus and each amendment and supplement thereto shall be filed in the requisite numbers. French language versions of the documents incorporated by reference into any of those documents shall be filed in Quebec not later than the time the incorporating document is filed. Thus, French language versions of continuous disclosure documents need not be filed until incorporated by reference. In addition, information contained in a Form 10–K or Form 10–Q prescribed under the 1934 Act that is not required to be disclosed under Quebec requirements applicable to offerings not made under the MJDS need not be included in the French language versions of those documents. Notwithstanding the foregoing, French language versions of the disclosure documents are not required to be filed for rights offerings made pursuant to section 3.4, unless (i) the issuer is a reporting issuer in Quebec other than solely as a result of rights offerings made pursuant to section 3.4, or (ii) 20% or more of the class of securities in respect of which the rights are issued is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

If the offering is being made solely in Canada, the preliminary prospectus, prospectus and each amendment and supplement thereto shall be prepared as if the offering were also being made in the United States. The issuer need not prepare or file the cover page of the U.S. registration statement and other information required in the U.S. registration statement, but not required in the U.S. prospectus.

Representations that securities offered under the MJDS will be listed on a stock exchange or that application has been or will be made to list such securities upon a stock exchange may be made in connection with offerings made under the MJDS.

The provisions of applicable Canadian securities legislation relating to the advertising of securities or the making of representations or undertakings in respect of offerings of securities, including, without limitation, the distribution of material to potential investors and the provision of information to the press prior to the issuance of a receipt for the prospectus, shall apply to offerings made under the MJDS. Solicitations of expressions of interest with respect to an issue of securities to be qualified for distribution under the MJDS may be made prior to the filing of a preliminary prospectus under the following conditions:

(a) The issuer has entered into an enforceable agreement with an underwriter whereby the underwriter has agreed to purchase the securities and which agreement has fixed the terms of the issue and requires the issuer to file with the principal jurisdiction, and obtain a receipt from it for, the preliminary prospectus within two business days from the date that the agreement is entered into by the parties thereto and to file with the other applicable securities regulatory authorities, and obtain a receipt from them for, the preliminary prospectus within three business days from the date that the agreement is entered into by the parties thereto;

(b) Once a receipt for the preliminary prospectus has been obtained, a copy of the preliminary prospectus is forthwith forwarded to any person who has expressed an interest in acquiring the securities;

(c) No contract of purchase and sale with respect to the securities is entered into until such time as the prospectus with respect to such securities has been filed and a receipt obtained for it; and

(d) Neither the underwriter nor the issuer has been advised in writing by an applicable securities regulatory authority that such issuer or underwriter is not entitled to rely on this sentence.

(2) *Selection of Principal Jurisdiction*

At the time of filing a preliminary prospectus under the MJDS, the issuer shall select a principal jurisdiction in Canada and advise the applicable securities regulatory authorities and, unless the offering is being made in Canada only, the SEC of its selection and that the offering is being made under the MJDS. The jurisdiction so selected may or may not agree to act in such capacity. If a jurisdiction does not agree to act, the issuer shall select another jurisdiction as principal jurisdiction. As of the date of this Policy Statement, the securities regulatory authorities of New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory and the Northwest Territories have indicated that they will not agree to act as principal jurisdiction in connection with offerings made under the MJDS.

(3) *Review Procedures*

Disclosure documents filed for an MJDS offering will be subject to SEC review procedures if the offering is being made both in Canada and the United States. Whether the offering is made both in Canada and the United States or solely in Canada, the applicable securities regulatory authorities will monitor materials filed under the MJDS in order to check compliance with the specific disclosure and filing requirements of this Policy Statement. In addition, the substance of the disclosure documents will be reviewed in the unusual case where, through monitoring of the materials or otherwise, the applicable securities regulatory authorities have reason to believe that there may be a problem with a transaction or the related disclosure or other special circumstances exist.

If the SEC notifies an issuer that a filing made under the MJDS has been selected for review, the issuer shall so notify the principal jurisdiction.

(4) *Receipt Procedures*

The receipt for a preliminary prospectus filed under the MJDS will be issued by each applicable securities regulatory authority when the preliminary prospectus and all required supporting documentation have been filed with it in the manner required by this Policy Statement.

Where the offering also is being made in the United States, the receipt for a prospectus filed under the MJDS will be issued by each applicable securities regulatory authority, unless it has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist, upon the following conditions having been satisfied:

(a) In the case of the principal jurisdiction, the related registration statement has been declared effective by the SEC, as certified by the issuer in writing (which may be in facsimile form);

(b) In the case of the other Canadian provinces and territories, the principal jurisdiction has notified such securities regulatory authority that the principal jurisdiction has issued a receipt for the prospectus; and

(c) The prospectus, all documents incorporated therein by reference and all supporting documentation required by this Policy Statement have been filed with such securities regulatory authority in the manner required by this Policy Statement.

Where the offering is being made solely in Canada, the receipt for a prospectus filed under the MJDS will be issued by each applicable securities regulatory authority upon the conditions set out in (b) and (c) above having been satisfied, unless it has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist.

Issuers filing a prospectus under the MJDS may elect to receive a single National Policy No. 1 Receipt that permits securities to be distributed in all provinces and territories in which a preliminary prospectus has been filed and which has not opted out of the National Policy No. 1 Receipt System, in accordance with the procedures set forth in part 3 of National Policy Statement No. 1.

(5) *Amendment, Supplement and Incorporation by Reference Procedures*

The provisions of applicable Canadian securities legislation that prescribe the circumstances under which a preliminary prospectus or prospectus is required to be amended and the form and content of an amendment shall not apply to offerings made under the MJDS. Instead, disclosure documents filed under the MJDS shall be amended and supplemented in accordance with U.S. securities law, but shall contain the

legends, where applicable, and certificates required by this Policy Statement.

Where a registration statement is amended in a manner that modifies the related U.S. prospectus, two copies of the documents containing the modification shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing of the amendment with the SEC. If the receipt for the prospectus has not been issued and the filing has been made as a result of the occurrence of a material adverse change since the last filing, such documents are required to be filed as an amendment to the preliminary prospectus. The issuer shall specify, upon filing, that such documents have been filed as such under applicable Canadian securities legislation. Otherwise such documents will not be considered to be amendments to the preliminary prospectus within the meaning of applicable Canadian securities legislation. Any modifications made to a prospectus by filing a post-effective amendment to the registration statement with the SEC must be made by filing an amendment to the prospectus with the applicable securities regulatory authorities.

An amendment is required to be filed with the applicable securities regulatory authorities in the event of a material adverse change in the additional disclosure contained only in the preliminary prospectus used in Canada or a material change in the additional disclosure contained only in the prospectus used in Canada.

A prospectus supplement used in connection with a Rule 415 Offering to modify a U.S. prospectus is required to be filed with the applicable securities regulatory authorities, as set forth below, as nearly as practicable contemporaneously with the filing thereof with the SEC and shall be deemed to be incorporated into the prospectus as of the date thereof, but only for the purpose of the offering of securities covered by the supplement. Such a prospectus supplement will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

Notwithstanding the preceding paragraph, a prospectus supplement is not required to be filed in a province or territory other than the principal jurisdiction if:

(a)(i) The prospectus supplement is used to describe the terms of a tranche of securities distributed under the prospectus (or is a preliminary form of such supplement for use in marketing) , and (ii) the securities covered by the supplement will not be distributed in such province or territory; or

(b)(i) The prospectus supplement is used to establish an MTN Program or other continuous offering program or to update disclosure for such program, and (ii) securities will not be distributed under such program in such province or territory.

Where (i) a revised prospectus, filed with the SEC other than as an amendment to the related registration statement pursuant to Rule 424(b) under the 1933 Act or otherwise, or (ii) a prospectus supplement is used to modify a prospectus other than a prospectus for a Rule 415 Offering or a Rule 430A Offering, such revised prospectus or prospectus supplement shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing of the revised prospectus or prospectus supplement with the SEC and shall be deemed to be incorporated into the prospectus as of the date thereof. Such revised prospectus or prospectus supplement will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

A Rule 430A Pricing Prospectus shall be filed with the applicable securities regulatory authorities as nearly as practicable contemporaneously with the filing of the Rule 430A Pricing Prospectus with the SEC. The information contained in a Rule 430A Pricing Prospectus that was omitted from the prospectus in accordance with Rule 430A under the 1933 Act and any other additional information which the issuer has elected to include therein shall be deemed to be incorporated by reference into the prospectus as of the date of the Rule 430A Pricing Prospectus. A Rule 430A Pricing Prospectus will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

Except as otherwise provided in this Policy Statement, documents shall be, and shall be deemed to be, incorporated by reference into each preliminary prospectus or prospectus filed under the MJDS in accordance with U.S. securities law. All documents that are incorporated by reference into a prospectus after issuance of the receipt therefor shall be filed with the applicable securities regulatory authorities as nearly as practicable contemporaneously with the filing thereof with the SEC.

Any statement contained in a document incorporated by reference into a prospectus shall be deemed to be modified or superseded, for the purposes of the prospectus, to the extent that a statement contained in the prospectus or in any other subsequently filed document that is incorporated by reference into the prospectus modifies or supersedes such statement. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of the prospectus.

(6) *Delivery Requirements*

Preliminary prospectuses, prospectuses and amendments and supplements thereto filed under the MJDS shall be delivered to offerees and purchasers in accordance with applicable Canadian securities legislation. All prospectus supplements applicable to the securities being purchased shall be attached to, or included with, the prospectus that is delivered to offerees and purchasers of such securities in accordance with applicable Canadian securities legislation. A Rule 430A Pricing Prospectus shall be delivered to offerees and purchasers, in lieu of the related prospectus, in accordance with applicable Canadian securities legislation.

Documents that are incorporated by reference into a preliminary prospectus or a prospectus filed under the MJDS, other than prospectus supplements and Rule 430A Pricing Prospectuses, are not required to be delivered to offerees or purchasers unless they are required to be so delivered under the securities laws of the United States. Such documents, in addition to being filed with applicable securities regulatory authorities as required by this Policy Statement, shall be provided by the issuer without charge to any person upon request.

3.9 *Additional Legends and Disclosure*

The following are the texts of certain additional legends and disclosure required to be included in a preliminary prospectus and/or prospectus used in Canada under the MJDS.

(1) There shall be printed in red ink on the outside front cover page (or on a sticker thereto) of each preliminary prospectus the following statement:

"This is a preliminary prospectus relating to these securities, a copy of which has been filed with the securities commission or similar authority in [insert the names of the provinces and territories where filed], but which has not yet become final for the purpose of a distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold to, nor may offers to buy be accepted from, residents of such jurisdictions prior to the time a receipt is obtained for the final prospectus from the appropriate securities regulatory authority."

(2) There shall be printed on the outside or inside front cover page (or on a sticker thereto) of each preliminary prospectus and prospectus the following statements:

(a) "This offering is being made by a U.S. issuer pursuant to disclosure documents prepared in accordance with U.S. securities laws. Purchasers should be aware that these requirements may differ from those of [insert the names of the provinces and territories where qualified]. The financial statements included or incorporated by reference in this prospectus have not been prepared in accordance with Canadian generally accepted accounting principles and thus may not be comparable to financial statements of Canadian issuers."

(b) "[All of] [Certain of] the directors and officers of the issuer and [all of] [certain of] the experts named herein reside outside of Canada. [[Substantially] all of the assets of these persons and of the issuer may be located outside of Canada.] The issuer has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for investors to effect service of process within Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the issuer, its directors and officers and [certain of] the experts named herein judgments obtained in Canadian courts predicated upon the civil

liability provisions of applicable securities laws in Canada."

(c) "This prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. No securities commission or similar authority in Canada or the United States has in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence."

(3) If documents are incorporated by reference in a preliminary prospectus or prospectus, the portion of the preliminary prospectus or prospectus which provides information about incorporation by reference shall include a statement that such documents have been filed with securities commissions or similar authorities in each jurisdiction in Canada in which the offering is being made and shall provide the name, address and telephone number of an officer of the issuer from whom copies of such documents may be obtained on request without charge.

(4) The following shall be included in each preliminary prospectus and prospectus:

"Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities within two business days after receipt or deemed receipt of a prospectus or any amendment. In several provinces and territories of Canada, securities legislation further provides a purchaser with rights of rescission or, in some jurisdictions, damages where the prospectus or any amendment contains a misrepresentation or is not delivered to the purchaser, provided that such remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the province or territory. Purchasers should refer to the applicable provisions of the securities legislation of their province or territory for particulars of these rights or consult with a lawyer. Rights and remedies also may be available to purchasers under U.S. law; purchasers may wish to consult with a U.S. lawyer for particulars of these rights."

(5) An underwriter of the Canadian offering named in the preliminary prospectus or prospectus remains subject to any obligation under applicable Canadian securities legislation to disclose the names of persons or companies having an interest in its capital.

3.10 *Reconciliation of Financial Statements*

An issuer offering securities pursuant to section 3.3 shall provide a reconciliation to Canadian GAAP or to International Accounting Standards of the financial statements contained in or incorporated by reference in the preliminary prospectus or prospectus in the notes to such financial statements or as a supplement included or incorporated by reference in the preliminary prospectus and prospectus. The reconciliation shall explain and quantify as a separate reconciling item any significant differences between the principles applied in the financial statements (including note disclosure) and Canadian GAAP or International Accounting Standards, as the case may be, and, in the case of the annual financial statements, shall be covered by an auditor's report.

Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for other offerings made under the MJDS.

3.11 *Certificates*

(1) *General*

Except as otherwise provided for Rule 415 Offerings and Rule 430A Offerings, each preliminary prospectus and prospectus used for an offering under the MJDS shall contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

Where there is an underwriter, except as otherwise provided for Rule 415 Offerings and Rule 430A Offerings, each preliminary prospectus and prospectus used for an offering under the MJDS shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(2) *Rule 415 Offerings*

In Rule 415 Offerings, issuers and underwriters may choose between two alternative methods of providing certificates. Either method can be substituted for the other until the filing of the prospectus. The method chosen for the provision of the issuer's and underwriters' certificates need not be the same.

Method 1 allows the use of prospectus supplements and, in the case of MTN Programs, pricing supplements (i.e., supplements setting the price and certain variable terms of the securities rather than establishing the program) that do not contain certificates, provided that a "forward-looking" certificate has been included in the prospectus or in the supplement establishing the program.

Method 2 requires the inclusion of certificates in each prospectus supplement and pricing supplement filed under the MJDS, provided that no certificate is required to be included in a prospectus supplement filed with the securities regulatory authority in the principal jurisdiction if the securities covered by such prospectus supplement are not offered in Canada.

The text of the certificates for Rule 415 Offerings is set forth in appendix "A".

(3) *Rule 430A Offerings*

(a) *Issuer's Certificate.*

Each (i) preliminary prospectus and prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (ii) each amendment to a preliminary prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (iii) each amended prospectus filed with the applicable securities regulatory authorities to commence a new period for filing a Rule 430A Pricing Prospectus, and (iv) each amendment to a prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering before the information omitted from the prospectus has been filed in either a Rule 430A Pricing Prospectus or an amendment shall contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

Where there is an underwriter, each (i) preliminary prospectus and prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (ii) each amendment to a preliminary prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (iii) each amended prospectus filed with the applicable securities regulatory authorities to commence a new period for filing a Rule 430A Pricing Prospectus, and (iv) each amendment to a prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering before the information omitted from the prospectus has been filed in either a Rule 430A Pricing Prospectus or an amendment shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(c) *Issuer's Certificate for Rule 430A Pricing Prospectus.*

Each Rule 430A Pricing Prospectus shall contain, in place of the certificate referred to in (a) above, the following issuer's certificate:

"The foregoing [insert, if applicable—", together with the documents incorporated herein by reference,"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(d) *Underwriters' Certificate for Rule 430A Pricing Prospectus.*

Where there is an underwriter, each Rule 430A Pricing Prospectus shall contain, in place of the certificate referred to in (b) above, the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing [insert, if applicable—", together with the documents incorporated herein by reference,"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(4) *Rights Offerings*

A rights offering prospectus used under section 3.4 need not contain an underwriters' certificate, provided that there is no soliciting activity in Canada other than the dissemination by the issuer of the rights and the prospectus and any securities acquired under a standby underwriting arrangement are not resold in Canada.

(5) *Signing of Certificates*

Certificates contained in a preliminary prospectus, prospectus, amendment to a preliminary prospectus or prospectus, prospectus supplement or Rule 430A Pricing Prospectus shall be signed in accordance with applicable Canadian securities legislation. However, the chief executive officer, chief financial officer and two directors, on behalf of the board of directors, of the issuer, and the underwriters may each sign such certificates for an offering made under the MJDS by an agent duly authorized in writing.

3.12 *Conflicts of Interest*

(1) *General*

Any provisions of applicable Canadian securities legislation which regulate conflicts of interest in connection with the distribution of securities of a registered dealer or a related party or related issuer or connected party or connected issuer of a registered dealer (the "Conflicts Rules") apply to offerings under the MJDS as follows:

(a) The Conflicts Rules shall not apply so as to require any specified disclosure in the preliminary prospectus or prospectus; and

(b) The Conflicts Rules shall apply so as to require the participation of an independent underwriter to the extent provided in sections 3.12 (2) and (3).

(2) *Participation of Independent Underwriter*

(a) *Canada-U.S. Offerings.*

In an offering made under the MJDS in both Canada and the United States, any requirement in the Conflicts Rules for the underwriting of a portion of a distribution by an independent underwriter shall be satisfied if the aggregate of the portions of the distribution in Canada and the United States underwritten by at least one independent underwriter and its affiliates is not less than the aggregate of the portions of the distribution in Canada and the United States underwritten by dealers in respect of which the issuer is a related issuer, related party, connected issuer or connected party or, where a dealer is not a registrant, would be a connected party or connected issuer if the dealer were a registrant.

(b) *Canada-Only Offerings.*

In an offering made under the MJDS solely in Canada, any requirement in the Conflicts Rules for the underwriting of a portion of a distribution by an independent underwriter shall be satisfied if the aggregate of the portions of the distribution underwritten by at least one independent underwriter and its affiliates is not less than the aggregate of the portions of the distribution underwritten by dealers in respect of which the issuer is a related issuer, related party, connected issuer or connected party.

(3) *Rule 415 Offerings*

The Conflicts Rules must be satisfied for a delayed Rule 415 Offering for each tranche. The Conflicts Rules may be satisfied for a continuous Rule 415 Offering on the basis of the total amount of securities proposed to be distributed on a continuous basis.

3.13 *Trust Indenture Requirements*

Any requirement of a Canadian province or territory (other than British Columbia) applicable to trust indentures, in respect of any debt outstanding or guaranteed thereunder or to be issued or guaranteed thereunder (including, without limitation, any requirement that a person or company appointed as trustee under a trust indenture be resident or authorized to do business in the province or territory) shall not apply to offerings made under the MJDS, provided that:

(1) The trust indenture under which the obligations are issued or guaranteed is subject to and complies with the Trust Indenture Act of 1939 of the United States; and

(2) At least one person or company appointed as trustee under the trust indenture (i) is resident in such province or territory, (ii) is authorized to do business in such province or territory, or (iii) has filed with the applicable securities regulatory authority in such province or territory a duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part C of appendix "B".

Reference should be made to the Company Act (British Columbia) for the trust indenture requirements applicable in British Columbia.

3.14 *Filing Packages and Commercial Copies*

The supporting documentation specified below shall be filed with the applicable securities regulatory authorities in connection with offerings made under the MJDS in the manner specified. In addition, any exhibit to a registration statement shall be provided to an applicable securities regulatory authority upon request.

(1) *Certificate Confirming Satisfaction of Eligibility Requirements*

A certificate of the issuer, signed on its behalf by a senior officer, confirming that it satisfies the applicable eligibility criteria shall be filed with each applicable securities regulatory authority at the time of filing the preliminary prospectus for each offering made under the MJDS.

(2) *Consents*

The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of a disclosure document for an offering made under the MJDS or a document that is incorporated by reference therein, or who is named as having prepared or certified a report used in or in connection with such disclosure document or any document incorporated by reference therein (such part or report being referred to herein as an "expertised statement") , shall be prepared in accordance with the requirements of applicable Canadian securities legislation and shall be filed with each applicable securities regulatory authority in accordance with applicable Canadian securities legislation as follows:

(a) If the expertised statement appears in the preliminary prospectus, an amendment thereto, the prospectus or a document incorporated by reference into the prospectus that was filed prior to the filing of the prospectus, the related consent shall be filed at the time of filing the prospectus.

(b) If the expertised statement appears in an amendment to the prospectus, a prospectus supplement, a Rule 430A Pricing Prospectus, or a document incorporated by reference into a prospectus that was filed after the filing of the prospectus, the related consent shall be filed at the time of filing such amendment, prospectus supplement, Rule 430A Pricing Prospectus or document.

A further consent may be required to be filed with an amendment to a prospectus pursuant to the requirements of applicable Canadian securities legislation as a result of a material change to an expertised statement.

(3) *Reports on Property*

A report on the property of a natural resource company is not required to be filed for offerings made under the MJDS, unless such report is also required to be filed with the SEC.

(4) *Appointment of Agent for Service*

At the time of filing a prospectus under the MJDS, the issuer shall file a duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part A of appendix "B" with each applicable securities regulatory authority.

(5) *Powers of Attorney*

If a person or company signs a certificate by an agent pursuant to section 3.11(5), a duly executed copy of the document authorizing the agent to sign the certificate shall be filed with each applicable securities regulatory authority not later than the time of filing the document in which the certificate is included.

(6) *Fees*

The provisions of Canadian securities legislation regarding fees shall apply to an offering made under the MJDS in the same manner as though the offering had not been made under the MJDS.

Fees shall be payable for a Rule 415 Offering or Rule 430A Offering in the manner prescribed for offerings made under the shelf procedures and post-receipt pricing rules set forth in National Policy Statement No. 44, respectively.

(7) *Commercial Copies*

Commercial copies of any prospectus, prospectus supplement, preliminary prospectus used in connection with solicitations of expressions of interest, Rule 430A Pricing Prospectus or prospectus amendment used in an MJDS offering in connection with offers or sales of securities shall be filed with the applicable securities regulatory authorities. Once so filed, the commercial copy need not be refiled if it is used, without change, in offers or sales of additional tranches of securities.

4. *Bids for Securities of U.S. Issuers*

4.1 *General*

Subject to the provisions of this section 4, the MJDS permits eligible take-over bids and issuer bids for securities of a U.S. issuer to be made in accordance with U.S. requirements to Canadian residents where Canadian residents hold less than 40% of the securities. The MJDS enables offerors generally to comply with applicable U.S. disclosure requirements and requirements governing the conduct of the bid in lieu of complying with Canadian requirements.

The MJDS is extended to take-over bids and issuer bids primarily to encourage fair treatment of Canadian investors. Security holders in a particular jurisdiction who are excluded from an offer may be relegated to choosing, without the disclosure and procedural safeguards available under either the Canadian or the U.S. regulatory scheme, whether to sell into the secondary market at less than the full bid price and incur additional transactional costs or to remain minority security holders subject to the possibility of being forced out of their equity position in a subsequent merger. The application of the MJDS to bids is intended to facilitate bids by reducing duplicative regulation and avoiding conflict between the two regulatory schemes. Because the substantive protections and disclosure obligations applicable to bids are, as a whole, comparable to those prescribed by applicable Canadian securities legislation, Canadian resident holders of securities of U.S. issuers should remain adequately protected by the application of U.S. rather than Canadian rules in the circumstances contemplated by this Policy Statement.

Particularly when relatively few securities are held by Canadian residents, there may be a disincentive to extend a bid to them if doing so would require compliance with additional Canadian regulatory requirements. The availability of the MJDS for bids for securities of U.S. issuers is intended to alter the offeror's cost-benefit analysis in favour of extending those bids to Canadian residents.

There are no offeror eligibility requirements except in the case of securities exchange bids. For securities exchange bids, compliance with U.S. disclosure requirements satisfies Canadian disclosure requirements with respect to the offeror and the offered securities only if the offeror meets certain reporting history, listing and other eligibility requirements and, in the case of securities exchange take-over bids, a substantiality or Approved Rating requirement. In take-over bids, unlike issuer bids and rights offerings, the investor has not already made an investment decision with respect to the issuer of the securities that are being offered in the exchange.

Bids made under the MJDS must be extended to all holders of the class of securities subject to the bid in Canada and the United States. Further, bids must be made on the same terms and conditions to all security holders.

Provision is made in the securities legislation of some Canadian provinces for exemption from take-over bid and issuer bid requirements if the bid is for the securities of a non-Canadian issuer, the bid is made in compliance with the laws of a recognized jurisdiction and there are relatively few holders in the province holding a relatively small percentage of the class of securities subject to the bid. An offeror is permitted to make a bid under the MJDS in certain provinces and territories and pursuant to such an exemption in others.

4.2 *Eligibility Requirements for a Bid*

The MJDS may be used for a bid made to security holders in Canada if:

(1) The offeree issuer is a U.S. issuer;

(2) The offeree issuer is not registered or required to be registered as an investment company under the 1940 Act;

(3) The offeree issuer is not a commodity pool issuer;

(4) The bid is subject to section 14(d) of the 1934 Act in the case of a take-over bid or section 13(e) of the 1934 Act in the case of an issuer bid and is not exempt therefrom;

(5) The bid is made to all holders of the class of securities in Canada and the United States;

(6) The bid is made to residents of Canada on the same terms and conditions as it is made to residents of the United States; and

(7) Less than 40% of each class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

The calculation of the percentage of securities held by persons and companies having an address in Canada in this section 4 shall be made as of the end of the offeree issuer's last quarter preceding the date of filing the Tender Offer Statement or Issuer Tender Offer Statement with the SEC or, if such quarter terminated within 60 days of such filing date, as of the end of the offeree issuer's preceding quarter. If another bid for securities of the same class of the offeree issuer is in progress at the date of such filing, the foregoing calculation for the subsequent bid shall be made as of the same date as for the first bid already in progress.

Where (i) a take-over bid is made without the prior knowledge of the directors of the offeree issuer who are not insiders of the offeror or acting jointly or in concert with the offeror, or (ii) upon informing such directors of the proposed bid the offeror has a reasonable basis for concluding that the bid is being regarded as a hostile bid by a majority of such directors, and in either such case the offeror lacks access to the relevant list of security holders of the offeree issuer, it will be conclusively presumed that (7) above is satisfied and clause (a) in the definition of "foreign issuer" is not satisfied, unless (i) the aggregate published trading volume of the class on the Toronto, Montreal, Vancouver and Alberta stock exchanges and the Canadian Dealing Network Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States and NASDAQ for the 12 calendar month period prior to commencement of the bid (or, if another bid for securities of the same class is in progress, the 12 calendar month period prior to commencement of the first bid already in progress); (ii) disclosure that (7) above was not satisfied or such clause (a) was satisfied had been made by the issuer in its Form 10–K prescribed under the 1934 Act most recently filed with the SEC; or (iii) the offeror has actual knowledge that (7) above is not satisfied or such clause (a) is satisfied.

4.3 *Effect of Making a Bid*

Subject to the provisions of this section 4.3 and of section 4.4, any bid made under the MJDS shall be exempt from compliance with the provisions of applicable Canadian securities legislation governing the conduct of bids, except any requirement to file with the applicable securities regulatory authorities and deliver a bid circular, a directors' circular or an individual officer's or director's circular and any notice of change or notice of variation to holders of the securities subject to the bid. Except as specifically provided in this Policy Statement, such documents are not required to comply with the form and content requirements set forth in applicable Canadian securities legislation. Such documents shall contain the information required to be disseminated to security holders in accordance with U.S. requirements and the additional information, legends and certificates required by this Policy Statement. They shall contain no untrue statement of material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made, but need not contain any disclosure relevant solely to U.S. security holders.

Provisions of applicable Canadian securities legislation that require disclosure of acquisitions reaching a certain threshold or restrict acquisitions of securities once such a

threshold has been reached continue to apply.

Bids made under the MJDS must comply with the relevant requirements of applicable Canadian securities legislation relating to going private transactions, other than the requirement to provide a valuation at the time of a take-over bid where it is anticipated by the offeror that a going private transaction will follow the bid.

Where 20% or more of any class of securities that is the subject of a bid made under the MJDS is held by persons or companies whose last address as shown on the books of the issuer is in Canada, such bid must comply with the requirements of applicable Canadian securities legislation respecting integration of pre-bid transactions with the bid.

Where 20% or more of any class of securities that is the subject of an issuer bid or insider bid made under the MJDS is held by persons or companies whose last address as shown on the books of the issuer is in Canada, such bid must comply with the valuation requirements of applicable Canadian securities legislation.

All bids remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

The offeror shall comply with sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E thereunder in connection with any take-over bid made under the MJDS. The offeror shall comply with sections 13(e) and 14(e) of the 1934 Act and Regulations 13E and 14E thereunder in connection with any issuer bid made under the MJDS. The offeree issuer and its officers and directors shall comply either with the requirements of applicable Canadian securities legislation or with sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E thereunder in connection with any bid made under the MJDS.

4.4 *Securities Exchange Bids*

In the case of a securities exchange bid, the provisions of applicable Canadian securities legislation applicable as a result of the consideration for the securities of the offeree issuer being at least in part securities of the offeror or other issuer shall be satisfied by compliance with U.S. requirements only if:

(1) The offeree issuer and the bid satisfy the eligibility requirements set forth in Section 4.2;

(2) The offeror or, if the securities being offered are of another issuer, such other issuer, meets the eligibility requirements set forth in Sections 3.2(1)–(5), except that the reference in Section 3.2(3) to the filing of the preliminary prospectus with the principal jurisdiction shall be replaced by the filing of the registration statement with the SEC;

(3) The offeror or, if the securities being offered are of another issuer, such other issuer, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the registration statement with the SEC and is in compliance with the obligations arising from such listing or quotation; and

(4) Any of the following are satisfied:

(a) The equity shares of such offeror or, if the securities being offered are of another issuer, such other issuer, have a public float of not less than U.S. $75,000,000, determined as of a date within 60 days prior to the filing of the registration statement with the SEC;

(b) The securities being offered are non-convertible debt having an Approved Rating or non-convertible preferred shares having an Approved Rating; or

(c) The bid is an issuer bid made under the MJDS with securities of the issuer being offered as consideration.

4.5 *Mechanics of Making a Bid*

(1) *Filing Requirements*

In order to use the MJDS to make a bid in Canada or to any security holder whose last address as shown on the books of the offeree issuer is in Canada, an offeror shall prepare a Tender Offer Statement or Issuer Tender Offer Statement, any exhibits and amendments thereto and any information required to be disseminated to security holders in accordance with U.S. requirements as interpreted and applied by the SEC. The bid circular shall consist of the tender offer materials disseminated to security holders resident on the date of commencement of the bid in the United States as modified pursuant to this Policy Statement. French language versions of these documents are not required to be filed for bids made under the MJDS, unless (i) the offeree issuer is a reporting issuer in Quebec, or (ii) 20% or more of any class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

As nearly as practicable contemporaneously with the filing with the SEC, the offeror shall file one unsigned copy of the Tender Offer Statement or Issuer Tender Offer Statement and all exhibits and amendments thereto, and one signed and two unsigned copies of the bid circular, together with the following supporting documentation, with each applicable securities regulatory authority:

(a) A certificate of the offeror, signed on its behalf by a senior officer, confirming that the eligibility criteria set forth in section 4.2 and, if applicable, section 4.4 are satisfied;

(b) The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of such materials or any document filed pursuant to section 4.5(5) or incorporated by reference therein, or who is named as having prepared or certified a report used in or in connection with such materials or document;

(c) A duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part B of appendix "B"; and

(d) If a person or company signs a certificate by an agent pursuant to section 4.8, a duly executed copy of the document authorizing the agent to sign the certificate.

An offeror filing a bid circular under the MJDS must so notify the offeree issuer at its principal office not later than the business day following the day the bid circular is filed with any applicable securities regulatory authority.

(2) *Directors' and Individual Officer's and Director's Circulars*

If a bid is made under the MJDS, the offeree issuer and its officers and directors shall comply with the requirements of applicable Canadian securities legislation or with U.S. requirements in respect of the bid. In the case of compliance by the directors or by individual officers or directors with Canadian requirements, the requirements set out in this Policy Statement regarding directors' circulars or individual officer's or director's circulars, as the case may be, shall not apply. Otherwise, a Tender Offer Solicitation/Recommendation Statement, if applicable, and any exhibits and amendments thereto shall be prepared in accordance with U.S. requirements as interpreted and applied by the SEC. The directors' circular or an individual officer's or director's circular and any notice of change shall consist of the materials disseminated by the offeree issuer or its board of directors, an individual officer or officers, and an individual director or directors, respectively, to security holders resident in the United States and containing the certificates prescribed by section 4.8. As nearly as practicable contemporaneously with the filing with the SEC, one unsigned copy of the Tender Offer Solicitation/Recommendation Statement and all exhibits and amendments thereto and one signed and two unsigned copies of the directors' circular or an individual officer's or director's circular, together with the following supporting documentation, shall be filed with each applicable securities regulatory authority:

(a) A statement that the circular has been prepared in accordance with U.S. requirements;

(b) The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of such materials or any document incorporated by reference therein, or who is named as having prepared or certified a report used in connection with such materials; and

(c) If a person or company signs a certificate by an agent pursuant to section 4.8, a duly executed copy of the document authorizing the agent to sign the certificate.

Notwithstanding that a bid was eligible to be made under the MJDS, the offeree issuer and its officers and directors may not use the MJDS in respect of the bid if the offeror did not make the bid under the MJDS.

(3) *Notices of Variation and Notices of Change*

The provisions of applicable Canadian securities legislation that prescribe the circumstances under which a bid circular, directors' circular, or individual officer's or director's circular is required to be changed or varied and the form and content of the applicable disclosure documents shall not apply to bids made under the MJDS, unless,

in respect of the directors' circular or individual officer's or director's circular, the directors or individual officer or director have elected to comply with the requirements of applicable Canadian securities legislation. Instead, disclosure documents filed under the MJDS shall be changed or varied in accordance with U.S. requirements as additional tender offer materials, but shall contain the legends, where applicable, and certificates required by this Policy Statement.

Any additional tender offer materials that vary the terms of the bid shall be filed, as modified, with the applicable securities regulatory authorities as a notice of variation and identified as such. Any additional tender offer materials that contain a change in the information from that contained in the tender offer materials or previous additional tender offer materials, other than information in respect of a variation in the terms of the bid, shall be filed, as modified, with the applicable securities regulatory authorities as a notice of change and identified as such. Any additional tender offer materials required to be identified as a notice of variation and a notice of change shall be identified as both. Any additional materials prepared by the directors or an individual officer or director shall be filed, as modified, with the applicable securities regulatory authorities as a notice of change and identified as such.

Any notice of variation or notice of change shall be filed in the requisite numbers referred to in section 4.5(1) as nearly as practicable contemporaneously with the filing with the SEC. The filing package shall contain, if applicable, a duly executed copy of a document authorizing an agent to sign a certificate, and, in the event of a material change in the relevant part of the materials or document referred to in section 4.5(1)(b), a further consent.

(4) *Dissemination Requirements*

Bid circulars, notices of change thereto and notices of variation thereto filed under the MJDS shall be mailed by prepaid first class mail or delivered by personal delivery to security holders whose last address as shown on the books of the offeree issuer is in a province or territory in which the bid is made under the MJDS (and, in respect of notices of change and variation, whose securities were not taken up at the date of the occurrence of the change or variation), whether those materials are published, sent or given to security holders resident in the United States by the use of stockholder lists and security position listings, by long-form publication or by summary publication. Any such documents generally sent or given to security holders resident in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer is in Canada at the same time as they are sent or given to security holders resident in the United States. Any such documents published by long-form publication or by summary publication in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer is in Canada as soon as practicable following such publication.

Directors' circulars and individual officer's and director's circulars and notices of change thereto shall be mailed by first class mail or delivered by personal delivery to every person or company to whom a take-over bid circular was required to be delivered under the preceding paragraph. Any such document generally sent or given to security holders resident in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer in Canada at the same time as such document is sent or given to security holders resident in the United States. Any such document published in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree is in Canada as soon as practicable following such publication.

(5) *Securities Exchange Bids*

In the case of securities exchange bids made under the MJDS for which a registration statement is filed with the SEC, one signed copy of the registration statement and all exhibits and amendments thereto (together with all documents incorporated therein by reference) shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing with the SEC. The prospectus forming part of the registration statement shall be included in or incorporated by reference into the bid circular.

(6) *Incorporation by Reference Procedures*

Except as otherwise provided in this Policy Statement, documents shall be, and shall be deemed to be, incorporated by reference into materials filed under this section 4.5 in accordance with U.S. securities law. Any statement contained in a document so incorporated by reference shall be deemed to be modified or superseded to the extent that a statement contained in such materials or in any other subsequently filed document which is incorporated by reference into such materials modifies or supersedes such statement. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of such materials.

Documents that are incorporated by reference into materials filed under this section 4.5 are not required to be delivered to security holders unless they are required to be delivered to security holders under U.S. securities law; such documents, in addition to being filed with the applicable securities regulatory authorities, shall be provided without charge to any person upon request.

4.6 *Additional Legends*

The following are the texts of the additional legends and other disclosure required to be included in bid circulars used for a bid made under the MJDS. The legend contained in paragraph (1)(b) shall not be required if the offeror is incorporated or organized under the laws of Canada or a province or territory of Canada.

(1) The following shall be printed on the outside front cover page (or on a sticker thereto) of each bid circular used in Canada under the MJDS:

(a) "This bid is made in Canada [for applicable securities exchange bids—"by a U.S. issuer"] for securities of a U.S. issuer in accordance with U.S. securities laws. Security holders should be aware that the U.S. requirements applicable to the bid may differ from those of [insert the names of the provinces and territories where bid is made]. [For securities exchange bids, also insert the following—"The financial statements included or incorporated by reference herein have not been prepared in accordance with Canadian generally accepted accounting principles and thus may not be comparable to financial statements of Canadian issuers."]

(b) "[All of] [Certain of] the directors and officers of the offeror and [all of] [certain of] the experts named herein reside outside of Canada. [[Substantially] all of the assets of these persons and of the offeror may be located outside of Canada.] The offeror has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for security holders to effect service of process within Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the offeror, its directors and officers and [certain of] the experts named herein judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."

(2) If documents are incorporated by reference into the bid circular, include in the section which provides information about incorporation by reference a statement that information has been incorporated by reference from documents filed with securities commissions or similar authorities in each jurisdiction in Canada in which the documents have been filed and provide the name, address and telephone number of a person in Canada or the United States from whom copies of the documents so incorporated by reference may be obtained on request without charge.

(3) The following shall be included in bid circulars used in Canada under the MJDS:

"Securities legislation in certain of the provinces [and territories] of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province [or territory] for particulars of those rights or consult with a lawyer. Rights and remedies also may be available to security holders under U.S. law; security holders may wish to consult with a U.S. lawyer for particulars of these rights."

4.7 *Reconciliation of Financial Statements*

Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for securities exchange bids made under the MJDS that satisfy the eligibility requirements of section 4.4.

4.8 *Certificates*

The text of the certificate for bid circulars and directors' and individual officer's and director's circulars used under the MJDS is as follows:

"The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made."

The text of the certificate for notices of variation and notices of change shall be in the form required in the preceding paragraph, amended to refer to the initial circular and all notices of variation or change thereto.

The certificate shall be signed in accordance with applicable Canadian securities legislation. However, the chief executive officer, the chief financial officer, and two directors, on behalf of the board of directors, of the offeror or the offeree issuer, may each sign the certificate by an agent duly authorized in writing.

4.9 *Fees*

The provisions of Canadian securities legislation regarding fees shall apply to a bid made under the MJDS in the same manner as though the bid had not been made under the MJDS.

5. *Business Combinations*

5.1 *General*

The MJDS permits securities of a U.S. issuer to be distributed by prospectus in Canada on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure) in connection with a business combination where less than 40% of the securities to be distributed by the successor issuer would be held by Canadian residents. As in the case of take-over bids, the MJDS is available for business combinations primarily to encourage fair treatment of Canadian investors.

Securities legislation of most of the Canadian provinces and territories provides for an exemption from prospectus requirements for certain distributions of securities issued in connection with a statutory amalgamation, merger or arrangement. As a result, an issuer may elect not to use the MJDS, but to distribute securities issued in a business combination pursuant to a prospectus exemption. A consequence of using a prospectus exemption instead of the MJDS may be resale restrictions on the distributed securities. However, under blanket rulings issued in certain provinces, the resale of securities acquired under such an exemption is not a distribution in respect of which a prospectus is required if the issuer meets certain eligibility and reporting requirements and the resale is executed through the facilities of a stock exchange outside of Canada or on NASDAQ.

A business combination done under the MJDS must comply with the relevant requirements of applicable Canadian securities legislation relating to going private transactions and, if it constitutes a related party transaction, the relevant requirements of applicable Canadian securities legislation relating to minority approvals and valuations. All business combinations remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

5.2 *Eligibility Requirements*

The MJDS may be used for the distribution of securities to security holders in Canada in connection with a business combination by a successor issuer subsisting after the business combination if:

(1) Each person or company participating in the business combination meets the eligibility requirements specified in sections 3.2(1)–(5), provided that the eligibility requirements specified in sections 3.2(2)–(3) shall not be required to be met in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed;

(2) The equity shares of each person or company participating in the business combination have a public float of not less than U.S. $75,000,000, determined as of a date within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction, provided that this requirement shall not apply in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed, and provided further that such requirement may be satisfied in respect of a participating person or company whose securities were the subject of a bid made under or eligible to have been made under the MJDS that terminated within the preceding 12 months if such requirement would have been satisfied immediately prior to commencement of the bid;

(3) Each person or company participating in the business combination has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction and is in compliance with the obligations arising from such listing or quotation, provided that this requirement shall not apply in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed;

(4) The issue or exchange of securities in connection with the business combination is made to residents of Canada on the same terms and conditions as it is made to residents of the United States; and

(5) Less than 40% of the class of securities to be distributed in the business combination by the successor issuer would be distributed to persons or companies whose last address as shown on the books of the participating person or company is in Canada.

The calculation of the percentage of securities held by persons or companies having an address in Canada shall be made with respect to each participating person or company as of the end of such participating person's or company's last quarter preceding the date of filing the preliminary prospectus with the principal jurisdiction or, if such quarter terminated within 60 days of such filing date, as of the end of the participating person's or company's preceding quarter. Such calculation shall be made on the basis of the assumption that all persons or companies who have an option in respect of the consideration to be received pursuant to the business combination elect the option that would result in the issuance of the greatest number of securities.

5.3 *Mechanics*

If the eligibility requirements set forth in section 5.2 are met, securities may be distributed in Canada under the MJDS in connection with a business combination by complying with the procedures set forth in sections 3.8, 3.9, 3.11(1), 3.11(5) and 3.14. The disclosure documents would be required to be filed both as a prospectus and as an information circular. Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for business combinations done under the MJDS.

6. *Continuous Disclosure, Proxies and Proxy Solicitation, Shareholder Communication and Insider Reporting*

An issuer that files a prospectus or a bid circular for a securities exchange take-over bid in certain provinces of Canada becomes a reporting issuer in those provinces, subject, among other things, to certain continuous disclosure, proxy and proxy solicitation, and shareholder communication requirements, with its insiders being subject to certain insider reporting requirements.

Compliance with U.S. requirements relating to (i) current reports, (ii) annual reports, and (iii) proxy statements, proxies and proxy solicitation by a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act (or, in the case of current

reports and annual reports, is required to file reports pursuant to section 15(d) of the 1934 Act) will satisfy the requirements of the Canadian provinces and territories relating to (i) reports of material change, (ii) annual information forms, annual reports and management's discussion and analysis of financial condition and results of operations, and (iii) information circulars, proxies and proxy solicitation, respectively, provided that (a) two copies of any material filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of material of that nature (i) in the case of current reports, forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC, and (ii) in the case of other documents, within 24 hours after they are filed with the SEC, and (b) such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law.

Compliance by any other person or company with U.S. requirements relating to proxies and proxy solicitation with respect to a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act will satisfy the requirements of the Canadian provinces and territories relating to proxies and proxy solicitation, provided that (i) two copies of any material relating to a meeting of security holders filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of material of that nature within 24 hours after they are filed with the SEC, and (ii) such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law.

Compliance with U.S. requirements relating to quarterly reports and annual reports by a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act or is required to file reports pursuant to section 15(d) of the 1934 Act will satisfy the requirements of the Canadian provinces and territories relating to interim financial statements and annual financial statements, respectively, provided that:

(1) Two copies of any material filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of financial statements within 24 hours after they are filed with the SEC; and

(2) (a) if:

(i) The issuer is a reporting issuer in the Canadian provinces and territories solely as the result of offerings, bids and business combinations made under the MJDS;

(ii) The issuer meets the eligibility requirements specified in sections 3.3 (1) and (2) ; or

(iii) The issuer meets the eligibility requirements specified in sections 3.2 (1)–(5) and the issuer is a reporting issuer in the Canadian provinces and territories solely as the result of the distribution of securities that have an Approved Rating and meet the eligibility requirements of section 3.2(6);

Then such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law; or

(b) Otherwise such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable Canadian securities legislation.

A U.S. issuer that has a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ may satisfy any obligation under Canadian securities legislation to issue and file a press release by (i) complying with the requirements of either such exchange or NASDAQ in respect of making public disclosure of material information on a timely basis, and (ii) forthwith issuing in Canada, and filing with the applicable securities regulatory authorities that require the filing of press releases, any press release that discloses a material change in its affairs.

A U.S. issuer shall not be required to comply with the requirements of National Policy Statement No. 41 (Shareholder Communication) so long as it complies with the requirements of Rule 14a–13 under the 1934 Act with respect to any Canadian clearing agency (*i.e.*, The Canadian Depository for Securities Limited and West Canada Depository Trust Company) and any intermediary whose last address as shown on the books of the issuer is in Canada. Any such clearing agency or intermediary shall be required to comply only with the requirements of National Policy Statement No. 41 with respect to any such issuer, including, without limitation, responding to search cards and delivering proxy-related materials within the time periods specified in National Policy Statement No. 41. Any such intermediary shall be entitled to receive the fees and charges set out in National Policy Statement No. 41. For purposes of this paragraph, an intermediary means a registered dealer or adviser, a financial institution (bank or trust company) , a participant in a clearing agency, a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan, or other similar self-administered savings or investment plan registered under the Income Tax Act (Canada) , or a nominee of any of the foregoing, that holds a security on behalf of another person or company who is not the registered holder of the security, unless excluded from the definition of "intermediary" by National Policy Statement No. 41.

An insider of a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act shall not be required to file with any securities regulatory authority in Canada insider reports with respect to holdings of securities of such issuer so long as such insider files with the SEC on a timely basis all reports required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder.

7. U.S.-Only Offerings by Canadian Issuers

Where a Canadian issuer uses Form F–9 or F–10 prescribed under the 1933 Act to make an offering solely in the United States under the multijurisdictional disclosure system adopted by the SEC, the issuer shall select a review jurisdiction in Canada no later than the time of filing the registration statement with the SEC and shall advise the SEC of its selection. The jurisdiction selected may or may not agree to act in such capacity. If a jurisdiction does not agree to act, the issuer shall select another jurisdiction. As of the date of this Policy Statement, the securities regulatory authorities of New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory and the Northwest Territories have indicated that they will not agree to act as the review jurisdiction in connection with offerings made under the MJDS. The issuer shall file with the review jurisdiction the documents that it files with the SEC no later than the time such documents are filed with the SEC, provided that the preliminary prospectus and prospectus filed with the review jurisdiction need not contain a certificate signed by the underwriters.

If the review jurisdiction selects a U.S.-only offering for review, it will so notify the issuer and the SEC within three business days of the date of filing of the preliminary prospectus. The review jurisdiction will give its comments, if any, to the issuer. Once all the comments have been resolved, the review jurisdiction will notify the issuer and the SEC of the receipt of the prospectus. The issuer shall pay a fee of $2,500 to the review jurisdiction at the time of filing the preliminary prospectus.

The selection of a review jurisdiction does not affect any obligation the issuer otherwise may have to file a prospectus with a securities regulatory authority in Canada, whether as a result of the likelihood that the securities will not come to rest outside of Canada, as a result of a distribution being made from a province or territory, or otherwise.

8. U.S. Offerings of Debt and Preferred Shares by Canadian Issuers

Securities offered by a Canadian issuer on or before June 30, 1992 using Form F–9 prescribed under the 1933 Act for use in the multijurisdictional disclosure system adopted by the SEC must receive, prior to issuance, a provisional rating by C.B.R.S. Inc. or Dominion Bond Rating Service Limited in one of the rating categories referred to in the definition of Approved Rating in Section 2.

Appendix "A" to National Policy Statement No. 45 Forms of Certificates for Rule 415 Offerings

1. Method 1: Supplements Without Certificates

(a) *Issuer's Certificate.*

(i) To use Method 1, the preliminary prospectus and prospectus used for a Rule 415 Offering must contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or

the market price of the securities to be distributed"]".

(ii) To use Method 1 for an MTN Program established under a prospectus for a Rule 415 Offering by a prospectus supplement, where a certificate of the issuer of the type referred to in paragraph 1(a)(i) of this appendix was not included in the prospectus, the supplement establishing such program in Canada must contain the following issuer's certificate:

"The prospectus dated * * *, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered hereby and by such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 1, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of the type referred to in paragraph 1(a)(i) of this Appendix, must contain the following issuer's certificate:

"The prospectus dated * * *, as amended, together with the documents incorporated therein by reference, as of the date of each supplement thereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

(i) Where there is an underwriter, to use Method 1 each preliminary prospectus and prospectus for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus supplement, are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) To use Method 1 for an MTN Program established by a prospectus supplement, where the prospectus did not contain a certificate of an underwriter of the type referred to in paragraph 1(b)(i) of this appendix of an underwriter, such supplement shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by such supplement, are, or will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated * * *, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered hereby and by such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 1, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of an underwriter of the type referred to in paragraph 1(b)(i) of this appendix, shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated * * *, as amended, together with the documents incorporated therein by reference, as of the date of each supplement thereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

2. *Method 2: Certificates in Each Supplement*

(a) *Issuer's Certificate.*

(i) To use Method 2, the preliminary prospectus and prospectus used for a Rule 415 Offering must contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to such securities as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) To use Method 2, each prospectus supplement used for a Rule 415 Offering must contain the following issuer's certificate:

"The prospectus dated ***, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and this supplement as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 2, each amendment to a prospectus used in Canada for a Rule 415 Offering must contain the following issuer's certificate:

"The prospectus dated ***, as amended, together with the documents incorporated therein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered thereby as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

(i) Where there is an underwriter, to use Method 2, each preliminary prospectus and prospectus for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to such securities as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) Where there is an underwriter, to use Method 2, each prospectus supplement used for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus supplement, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated ***, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and this supplement as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 2, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of an underwriter of the type referred to in Paragraph 2(b)(i) of this appendix, shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated ***, as amended, together with the documents incorporated therein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered thereby as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iv) If:

A. Method 2 is being used;

B. An amendment to a prospectus for a Rule 415 Offering is filed with respect to a material change that occurred during a period

when offers and sales of securities are being made by an underwriter in Canada; and

C. Such prospectus did not contain a certificate of such underwriter of the type referred to in paragraph 2(b) (i) of this appendix,

Such underwriter shall resign the certificate that it previously provided pursuant to Paragraph 2(b) (ii) of this Appendix in the prospectus supplement describing the securities being so offered. This resigned underwriters' certificate shall be filed with the applicable securities regulatory authorities concurrently with the amendment.

Appendix "B" to National Policy Statement No. 45 Forms of Submission to Jurisdiction and Appointment of Agent for Service of Process

A. *Prospectus Offering of Securities*

1. Name of issuer (the "Issuer"):

_____

2. Jurisdiction of incorporation of Issuer:

_____

3. Address of principal place of business of Issuer: _____.

4. Description of securities (the "Securities") : _____

5. Date of prospectus (the "Prospectus") pursuant to which the Securities are offered:

_____

6. Name of agent (the "Agent") :

_____

7. Address for service of process of Agent in Canada: _____.

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Securities are distributed pursuant to the Prospectus; and

(b) any administrative proceeding in any such province [or territory], in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of _____ (province of above address of Agent).

Dated:_____

_____

(Issuer)

By: _____

(Name and title)

The undersigned accepts the appointment as agent for service of process of _____ (Issuer) pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated:_____

_____

[Agent]

By: _____

(Name and title)

B. *Take-Over or Issuer Bid*

1. Name of offeror (the "Offeror") :

_____.

2. Jurisdiction of incorporation of Offeror:

_____

3. Address of principal place of business of Offeror: _____.

4. Description of securities (the "Securities") : _____.

5. Date of bid (the "Bid") for the Securities:

_____

6. Name of agent (the "Agent") :

_____

7. Address for service of process of Agent in Canada: _____.

8. The Offeror designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the Bid [insert for securities exchange bids—"or the obligations of the Offeror as a reporting issuer"] , and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9.The Offeror irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) The judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Bid is made; and

(b) Any administrative proceeding in any such province [or territory],

In any Proceeding arising out of or related to or concerning the Bid.

10. Until six years from the date of the Bid, the Offeror shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years from the date of the Bid, the Offeror shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of _____ [province of above address of Agent].

Dated:

(Offeror)

_____

By: _____

(Name and title)

The undersigned accepts the appointment as agent for service of process of _____ [Offeror] pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated:_____

_____

(Agent)

By: _____

(Name and title)

C. *Trust Indenture*

1. Name of trustee (the "Trustee"):

_____

2. Jurisdiction of incorporation of Trustee:

_____

3. Address of principal place of business of Trustee: _____.

4. Description of securities (the "Securities") : _____.

5. Date of trust indenture (the "Indenture") pursuant to which the Securities are issued:

_____.

6. Name of agent (the "Agent") :

_____

7. Address for service of process of Agent in Canada: _____.

8. The Trustee designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the Indenture, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Trustee irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) The judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Securities are issued; and

(b) Any administrative proceeding in any such province [or territory],

In any Proceeding arising out of or related to or concerning the Indenture.

10. Until six years from the termination of the Indenture, the Trustee shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years from the termination of the Indenture, the Trustee shall file an amended Submission to Jurisdiction and

Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of _____ [province of above address of Agent].

Dated:_____

_____

(Trustee)

By: _____

(Name and title)

The undersigned accepts the appointment as agent for service of process of _____ [Trustee] pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated:_____

_____

(Agent)

By: _____

(Name and title)

[FR Doc. 91-15402 Filed 6-28-91; 8:45 am]

BILLING CODE 8010-01-M

federal register

Monday
July 1, 1991

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Foreign Air Carrier Security Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. 26460; Amdt. No. 129-22]

RIN 2120-AD94

Foreign Air Carrier Security Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the Federal Aviation Regulations to require foreign air carriers that land or take off in the United States to provide passengers a level of protection similar to the level of protection provided by U.S. air carriers at the same airport. To ensure that foreign air carrier security programs contain procedures which provide a similar level of protection, the Administrator could amend those programs according to the procedures in this rule. This action is needed to ensure that appropriate security measures are implemented by foreign air carriers operating into and out of the United States. This action also implements Congressional legislation enacted on November 16, 1990. The intended effect of this rule is to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States by reducing the risk of fatalities and property damage attributable to criminal acts against civil aviation.

EFFECTIVE DATE: July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Max D. Payne, Civil Aviation Security Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267-7839.

SUPPLEMENTARY INFORMATION:

Background

Statement of the Problem

Attacks against civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the aviation community. Over 1,000 passengers on civil aircraft from 14 different member states of the International Civil Aviation Organization (ICAO) have died as the result of criminal acts against civil aviation in the last 10 years. Sabotage and hijacking of civil aircraft are worldwide problems requiring a unified, global solution.

History

The FAA's present Civil Aviation Security Program was initiated in 1973. part 129 of the Federal Aviation Regulations (FAR) governs the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by DOT. The foreign air carrier security regulations were promulgated in 1976 (41 FR 30106; July 22, 1976).

The FAA issued an amendment to FAR § 129.25(e) in 1989 (54 FR 11116; March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the safety of persons and property traveling by air. The rule applies to foreign air carrier operations at United States airports and at foreign airports that are last points of departure prior to landing in the United States.

With respect to that portion of a security program dealing with airports that are identified as last points of departure to the United States, foreign air carriers may refer the FAA to the appropriate foreign government authorities that implement security procedures (54 FR 25551; June 15, 1989).

Currently, 138 foreign air carriers are required to submit security programs, and all have done so. The programs contain sensitive security procedures and are not available to the public, in accordance with 14 CFR Part 191 (41 FR 53777; December 9, 1976), which establishes the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974 (Pub. L. 93-366).

On January 29, 1991, the FAA issued a notice of proposed rulemaking (NPRM) (56 FR 4328; February 4, 1991) that set forth a proposed amendment to FAR § 129.25(e). In the NPRM, the FAA proposed to provide procedures to amend foreign air carrier security programs to ensure those programs provide passengers with a level of protection similar to that provided under the security programs of U.S. air carriers serving the same airports.

Terrorism and other criminal acts against civil aviation are global in nature. Access to the air transportation system may be attempted through airports in countries far from the terrorist's intended target where the perceived threat to that nation's interests is not high and the security measures accordingly are less stringent. To prevent terrorist acts, aviation security standards must be raised worldwide. The Secretaries of State and Transportation are committed to both multilateral and bilateral consultations and negotiations to strengthen and improve aviation security standards in all countries. The United States has already reached agreement with 57 countries on the addition of aviation security articles to their bilateral air transport agreements.

Aviation Security Improvement Act of 1990

On November 16, 1990, the President signed the Aviation Security Improvement Act of 1990 (Pub. L. 101-604) (the Act). It permits the Administrator of the FAA to accept a foreign air carrier security program only if the Administrator determines that the security program provides passengers with a level of protection similar to that provided under the security programs of U.S. air carriers serving the same airports.

Background of the Rule

The FAA is amending part 129 to ensure that all foreign air carriers that land or take off in the United States adopt and use a security program that provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airport.

The FAA is also amending part 129 to provide procedures to amend foreign air carrier security programs in the interest of safety in air transportation or in air commerce and in the public interest. The procedures for the amendment of foreign air carrier security programs closely parallel the procedures in part 108 for the amendment of U.S. air carrier security programs. Except in an emergency, proposed amendments will be issued to the foreign air carrier for comment prior to adoption. A specified period of time would be set aside for the submission of comments and the implementation of any amendment adopted. In an emergency, when it is impractical or contrary to the public interest to follow normal procedures providing time for comments, the Administrator may amend a security program effective on the date it is received by the foreign air carrier.

Foreign air carrier security programs may be amended to implement enhanced security procedures at airports where the FAA has identified an increased risk to passengers and the Administrator determines that such

procedures are necessary to provide passengers a similar level of protection.

Discussion of Comments

The FAA received comments from nine foreign air carriers, one U.S. air carrier association, one foreign air carrier association, five U.S. crewmember organizations, and a United States Senator. A diplomatic note jointly submitted by 15 foreign governments was also placed in the docket. Several of the comments from foreign air carriers contained virtually identical arguments. The foreign commenters were generally opposed to the proposed rule or concerned that it could supersede the process of bilateral consultation and negotiation. Comments from interested parties in the United States generally argued that the proposed rule should be modified to require identical, rather than similar, security procedures for foreign air carriers and U.S. air carriers.

The predominant theme of comments opposing the proposed rule was the impact on relationships between the United States and other countries. Nine comments and the diplomatic note expressed concerns for the legality and consistency of the rule with the Convention on International Civil Aviation (Chicago Convention), in particular Annex 17; the legality and consistency of the proposed rule with current bilateral air transport agreements; and the possible effect on the sovereignty of foreign countries. These concerns focused primarily on the application of the proposed rule to foreign air carrier operations at foreign airports.

Nine commenters argued that the rule is inconsistent with the Chicago Convention and its Annex 17. The United States has been a leader in developing the International Civil Aviation Organization's (ICAO) multilateral Security Standards and Recommended Practices, which are incorporated into Annex 17 of the Chicago Convention. These standards are continually reviewed and updated. The United States actively engages in bilateral consultations to coordinate and improve aviation security policies and procedures and attempts to resolve disagreements with foreign governments as quickly and amicably as possible.

More important, this rule is consistent with the precepts of the regime established by the Chicago Convention. Article 1 of the Convention recognizes the complete and exclusive sovereignty of each State over the airspace above its territory. Inherent in this sovereignty is the right of each State to protect its inhabitants from possible threats to their safety from foreign aircraft entering that airspace. An aircraft not subjected to adequate security controls at the last point of departure in another country may well be the target of an act of unlawful interference or sabotage, posing a hazard to the safety of the inhabitants of the country into which that aircraft operates. The Chicago Convention recognizes this fundamental right in Article 11. This Article provides that

> the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, * * * shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

Nothing in the rule detracts from the basic right established by the Convention.

Six foreign air carriers commented that the rule should require the Administrator to consult with foreign governments prior to, or in lieu of, amending the procedures in a foreign air carrier's security program applicable at a foreign airport. Three commenters expressed their concern that foreign air carriers would not be able to comply with the rule when a foreign government and the United States Government disagree as to the appropriate security procedures. The diplomatic note also urged the FAA to add a clause to the proposed regulation that would affirm the intention of the United States Government to consult with foreign governments whenever enhanced security procedures are envisaged at a foreign airport.

The FAA is acutely aware of the United States obligations under its bilateral air transport agreements, the Chicago Convention, and other international agreements. United States policy, established by section 201(a)(1) of the Act, is to seek bilateral agreements with foreign governments to achieve aviation security objectives. The FAA stated in the preamble of the NPRM that, except in an emergency, it will consult with the concerned foreign government authorities whenever enhanced security procedures are deemed necessary at a foreign airport. The United States Government reemphasizes its intention to consult with foreign government authorities and seek bilateral and multilateral agreements in accordance with United States policy.

A restatement of United States policy would not, however, be appropriate in the language of the regulation itself. FAR part 129 regulates the operations of foreign air carriers only. A requirement placed in FAR part 129 should not regulate the FAA or the Department of State in the conduct of relations with foreign governments.

Five other commenters raised the question of consistency with United States bilateral air transport agreements. These commenters argued that the proposed rule is inconsistent with bilateral air transport agreements or is superseded by a particular bilateral agreement and would, therefore, have no effect in that country. United States bilateral air transport agreements are not identical in all their provisions but are uniform with respect to certain provisions. Among the uniform provisions is an obligation, consistent with the requirement of Article 11 of the Chicago Convention, that States require their airlines to comply with the rules governing entry into, departure from, and operation within the territory of the other contracting States. This is such a rule.

The applicability of the rule to foreign air carrier operations at foreign airports that are last points of departure to the United States is necessary in order for the FAA to ensure that foreign air carrier operations into U.S. territory provide a level of protection similar to that provided by U.S. air carriers at those airports. The FAA also recognizes that government authorities, and not air carriers, perform security procedures at many foreign airports.

The notice of implementation policy published on June 15, 1989 (54 FR 25551) sets forth a policy that foreign air carriers could refer the FAA to the appropriate government authorities for information regarding the implementation of security procedures. That policy remains in effect. The FAA will look first to the foreign government authorities named by the foreign air carrier to obtain the information necessary to determine if a foreign air carrier's security program is acceptable.

Eight foreign air carriers objected to the proposed procedures by which the Administrator could amend a foreign air carrier's security program. Six foreign air carriers argued that the FAA should give notice of the specific deficiencies identified in a foreign air carrier's security program and an opportunity to address those deficiencies, prior to the Administrator's amending its security program. The proposed rule clearly stated that the Administrator would notify the foreign air carrier, in writing, of a proposed amendment and fix a period of not less than 45 days for the foreign air carrier to submit comments, unless there is a finding of an emergency

requiring immediate action with respect to safety in air transportation.

The proposed rule also included procedures by which the foreign air carrier, except in an emergency, may request the Administrator to reconsider an amendment to its security program, and may submit its own amendment for acceptance. The FAA's mandate to exercise regulatory authority over air carriers also provides that an exemption may be granted when the air carrier can demonstrate that an alternative procedure will provide an equivalent level of safety. The FAA will not act unilaterally to amend foreign air carrier security programs except in an emergency. In those instances where the implementation of an amendment would require significant activities occurring outside of United States territory, the United States Government will endeavor to consult in advance with the foreign government in whose territory such activities would occur.

Two foreign air carriers specifically objected to the proposed rule on the grounds that Congress had not included any provision to amend foreign air carrier security programs in the Act. The Act provides that the Administrator "shall require" foreign air carriers to employ equivalent procedures where such procedures are necessary to ensure passengers are provided a similar level of protection. The Act further provides that the Administrator "shall take such action as may be necessary" to ensure that previously accepted foreign air carrier security programs also provide passengers a similar level of protection. The rule implements statutory authority and establishes regulatory authority to implement these provisions of the Act.

One commenter observed that the proposed rule did not specify, and foreign air carriers were not apprised of, the security procedures that might be required by an amendment to a foreign air carrier's security program. The commenter said that foreign air carriers could not meaningfully comment on the NPRM without knowing what substantive changes to their security programs were being contemplated by FAA. The specific security procedures to be used by a foreign air carrier are sensitive, not available under FAR part 191, and not disclosed in public documents such as the NPRM. The FAA has developed enhanced security procedures to be implemented by foreign air carriers where the FAA has identified an increased risk to passengers. The procedures to be implemented may be modified or selectively implemented to address the situation at hand. The FAA will notify the foreign air carrier of any proposed amendments to its security program in accordance with the procedures established by the rule.

Five commenters recommended, but seven commenters objected to, identical security procedures for U.S. air carriers and foreign air carriers. One commenter asserted that the proposed rule fell short of FAA's mandate. The Act does not specify identical procedures as the means of providing a similar level of protection. The Act also requires bilateral and multilateral negotiations to achieve security objectives.

The threat to air carriers from different countries varies widely and may change at any time at any airport. Rigid application of identical security procedures at all airports may not necessarily improve the security posture of each foreign air carrier and would impose a burden not reasonably related to the threat. The FAA will require, in consultation with foreign governments, equivalent procedures at airports where the Administrator has determined that such procedures are necessary to provide passengers a similar level of protection.

Two commenters also took issue with the FAA's statement in the NPRM that "the perceived—and often the actual—threat directed at the air carriers of various nations varies widely." These commenters asserted that the FAA is fostering a "misperception" that it is safer to fly on foreign air carriers than it is to fly on U.S. air carriers. The FAA has implemented a security system second to none to ensure that passengers may safely travel aboard U.S. air carriers anywhere in the world. The proposed rule did not mean to imply that passengers are at greater risk flying on U.S. air carriers, for such is not the case. Rather, the intent of the rule is to ensure that passengers are not at greater risk flying on foreign air carriers.

The risk to passengers traveling aboard a foreign air carrier must be compared with the risk to passengers flying U.S. air carriers at the same location. It is unwarranted to assume that passengers on all foreign air carriers are equally at risk wherever they may fly. Many foreign air carriers have never experienced an act of unlawful interference or sabotage, but could be threatened at an airport if the security posture at that airport deteriorates. Other foreign air carriers face a high threat but have implemented security procedures that reduce the risk. The FAA does not believe that equivalent security procedures are needed for all foreign air carriers at all airports to provide passengers a similar level of protection.

One commenter questioned the FAA's cost estimates as seriously understated. The enhanced procedures do not require sophisticated technology or lengthy training that would be difficult or excessively costly to implement. The FAA believes that the cost estimates may well be overstated both in terms of the scope of application of the enhanced procedures and the cost of labor to implement them at foreign airports.

Another commenter stated that the costs estimated by FAA were so low that it would be an "insignificant burden" to require identical security procedures for all air carriers. The FAA does not believe that security procedures should be required only for the sake of uniformity. The objective of the rule is to achieve a similar level of protection, not a similar level of expenditure.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for the regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full Regulatory Impact Analysis, which includes the identification and evaluation of alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains the Regulatory Flexibility Determination

required by the Regulatory Flexibility Act and an International Trade Impact Analysis. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Comments on the NPRM for this rule were received from a total of eighteen individuals, air carriers, governments, and associations. Only one commenter, an association of foreign air carriers, addressed the economic evaluation of the proposed rule. The FAA does not find any of the comments on the preliminary regulatory evaluation to be compelling, and as such, no changes have been made here. Again, the reader is referred to the full regulatory evaluation contained in the docket for the complete response to comments regarding the economic evaluation.

Cost/Benefit Comparison

Under the authority of the amendment, existing foreign air carrier security programs may be amended by adding enhanced security procedures for flights departing to the United States. The enhanced procedures would be activated when and where the FAA identifies an increased risk, and the Administrator, in consultation with the foreign government whenever possible, determines that such procedures are necessary to provide passengers a similar level of protection as that provided by U.S. air carriers serving the same airport.

Since the extent to which these enhanced procedures will be activated is dependent on unknown future risk conditions, a definitive estimate of the total costs attributable to the rule is not possible. Accordingly, this evaluation includes estimates of the unit costs that would be incurred to employ the enhanced procedures for a range of application levels.

Work-load estimates for twelve enhanced security procedures were developed by the FAA. The unit costs for each procedure were multiplied by appropriate operations data to determine the expected cost per departure and the average annual costs per station, per foreign air carrier, and for all carriers that are subject to the provisions of the rule.

On average, the FAA estimates that the enhanced security procedures will increase costs by $349 per airplane departure during the first year at those stations where the procedures are applied. The average annual costs for larger aggregations are estimated at $238,000 per station, $510,000 per foreign air carrier, and a maximum potential total of $49.5 million if the enhanced procedures are activated for all foreign air carrier flights into the U.S. for 1 year. The worldwide risk conditions that would be necessary to activate these procedures for all flights by all foreign air carriers are unprecedented and are considered to be unlikely.

Based on previous experience, the FAA estimates that not more than 10 percent of foreign air carrier stations are likely to operate under the enhanced security procedures at any given time. Applying this assumption, the most likely cost of the amendment will not exceed $4.9 million per year.

For comparison purposes, it is estimated that the average economic valuation of a terrorist explosion incident ranges between $94 and $104 million, not counting injuries or secondary effects. These data support the position that the rule will be cost-beneficial if one terrorist explosion incident resulting in damages consistent with the above average monetary estimate is prevented over a 20-year period at the expected level of costs, or over a 2-year period at the maximum estimated potential cost where the enhanced security procedures would be implemented by all affected foreign air carriers for all flights to the United States. The determination that the rule is cost-beneficial is further supported by the fact that the enhanced security procedures will only be applied in those cases where the FAA has identified an increased risk to passengers and the Administrator has determined that they are necessary.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has determined that this rule will not directly affect U.S. enterprises and, therefore, it will not have an economic impact on small domestic entities. This evaluation has not considered the impact on small foreign entities, on the basis that they are external to the scope of the RFA.

International Trade Impact Analysis

The provisions of this rule will not affect U.S. entities, but could affect the existing access to U.S. markets by foreign interests. The rule requires that the security programs of foreign air carriers provide passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. The most likely cost of the amendment will not exceed $4.9 million per year—an average of $51,000 per year per foreign air carrier providing services to the United States from airports that are also served by U.S. air carriers. U.S. air carriers are already subject to the enhanced security procedures associated with this rule.

Federalism Implications

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

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 129

Aircraft, Air carrier, Airports, Aviation safety, Weapons.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 129 of the Federal Aviation Regulations (14 CFR part 129) as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983].

2. Section 129.25(e) is revised to read as follows:

§ 129.25 Airplane security.

* * * * *

(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier's security program is acceptable only if the Administrator finds that the security program provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. Foreign air carriers shall employ procedures equivalent to those required of U.S. air carriers serving the same airport if the Administrator determines that such procedures are necessary to provide passengers a similar level of protection. The following procedures apply for acceptance of a security program by the Administrator:

(1) Unless otherwise authorized by the Administrator, each foreign air carrier required to have a security program by paragraph (b) of this section shall submit its program to the Administrator at least 90 days before the intended date of passenger operations. The proposed security program must be in English unless the Administrator requests that the proposed program be submitted in the official language of the foreign air carrier's country. The Administrator will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition the Administrator to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(2) In the case of a security program previously found to be acceptable pursuant to this section, the Administrator may subsequently amend the security program in the interest of safety in air transportation or in air commerce and in the public interest within a specified period of time. In making such an amendment, the following procedures apply:

(i) The Administrator notifies the foreign air carrier, in writing, of a proposed amendment, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the proposed amendment.

(ii) At the end of the comment period, after considering all relevant material, the Administrator notifies the foreign air carrier of any amendment to be adopted and the effective date, or rescinds the notice of proposed amendment. The foreign air carrier may petition the Administrator to reconsider the amendment, in which case the effective date of the amendment is stayed until the Administrator reconsiders the matter.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedures in paragraph (e)(2) of this section impractical or contrary to the public interest, the Administrator may issue an amendment to the foreign air carrier security program, effective without stay on the date the foreign air carrier receives notice of it. In such a case, the Administrator incorporates in the notice of amendment the finding and a brief statement of the reasons for the amendment.

(4) A foreign air carrier may submit a request to the Administrator to amend its security program. The requested amendment must be filed with the Administrator at least 45 days before the date the foreign carrier proposes that the amendment would become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving the requested amendment, the Administrator will notify the foreign air carrier whether the amendment is acceptable. The foreign air carrier may petition the Administrator to reconsider a notice of unacceptability of the requested amendment within 45 days after receiving notice of unacceptability.

(5) Each foreign air carrier required to use a security program by paragraph (b) of this section shall, upon request of the Administrator and in accordance with the applicable law, provide information regarding the implementation and operation of its security program.

* * * * *

Isssued in Washington, DC, on June 21, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-15509 Filed 6-25-91; 3:35 pm]

BILLING CODE 4910-13-M

federal register

Monday
July 1, 1991

Part V

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1991 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1991

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the circular and other information pertinent to Federal sureties may be obtained from : Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227. Telephone (FTS or 202) 287-3921. Interim changes are published in the FEDERAL REGISTER as they occur.

The following companies have complied with the law and the regulations of the Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Sections 9304 to 9308 of Title 31 of the United States Code (See Note a/).

Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

ACCELERATION NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017-0701. UNDERWRITING LIMITATION b/: $1,919,000. SURETY LICENSES c/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. UNDERWRITING LIMITATION b/: $502,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY. BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. UNDERWRITING LIMITATION b/: $1,271,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aetna Casualty and Surety Company (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $162,358,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $53,867,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $401,732,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $5,055,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

See Footnotes at end of Circular

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 2525 "C" Street, SUITE: 400, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,335,000. SURETY LICENSES c/: AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, NE, NM, NY, OH, RI, SD, TX, UT, WV, WI, WY. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335. UNDERWRITING LIMITATION b/: $293,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $58,731,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Allied Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 974, Des Moines, IA 50304. UNDERWRITING LIMITATION b/: $10,930,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $471,031,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company. BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $3,665,000. SURETY LICENSES c/: AZ, CA, CO, ID, IL, IA, KS, MN, MO, NE, NM, ND, OR, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $6,250,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

See Footnotes at end of Circular

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $11,338,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Bonding Company. BUSINESS ADDRESS: 350 W. Colorado Boulevard, SUITE: 370, Pasadena, CA 91105-1855. UNDERWRITING LIMITATION b/: $682,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IA, KS, KY, LA, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA, WV. INCORPORATED IN: Nebraska.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $21,824,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

American Economy Insurance Company. BUSINESS ADDRESS: Executive Offices-P.O.Box 1636, Indianapolis, IN 46204-1275. UNDERWRITING LIMITATION b/: $29,174,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $12,847,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ , NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: P.O. Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,350,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

American Fire and Casualty Company.1/ BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $8,267,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes at end of Circular

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $7,285,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

AMERICAN HARDWARE MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: P. O. Box 435, Minneapolis, MN 55440. UNDERWRITING LIMITATION b/: $4,551,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $84,007,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The). BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $24,039,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $11,353,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $5,335,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes at end of Circular

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $1,430,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. UNDERWRITING LIMITATION b/: $66,110,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Resources Insurance Co., Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. UNDERWRITING LIMITATION b/: $356,000. SURETY LICENSES c/: IN, KY, TN. INCORPORATED IN: Alabama.

AMERICAN ROAD INSURANCE COMPANY (THE). BUSINESS ADDRESS: P.O. Box 6027, The American Road, Dearborn, MI 48121-6027. UNDERWRITING LIMITATION b/: $64,895,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

American Southern Insurance Company. BUSINESS ADDRESS: P. O. Box 723030, Atlanta, GA 30339. UNDERWRITING LIMITATION b/: $1,879,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia.

American States Insurance Company. BUSINESS ADDRESS: Executive Offices-P.O. Box 1636, Indianapolis, IN 46206-1636. UNDERWRITING LIMITATION b/: $57,533,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company. BUSINESS ADDRESS: Post Office Box 24827, Jacksonville, FL 32241-4827. UNDERWRITING LIMITATION b/: $601,000. SURETY LICENSES c/: FL, GA. INCORPORATED IN: Florida.

See Footnotes at end of Circular

American Surety Company. BUSINESS ADDRESS: 7470 N. Figueroa Street, Los Angeles, CA 90041-1717. UNDERWRITING LIMITATION b/: $142,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $2,162,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, PR 00902. UNDERWRITING LIMITATION b/: $1,434,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025-3507. UNDERWRITING LIMITATION b/: $36,890,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Arkwright Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02254-9198. UNDERWRITING LIMITATION b/: $53,369,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $3,191,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC CASUALTY AND FIRE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 6108, Columbia, SC 29260-6108. UNDERWRITING LIMITATION b/: $819,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: South Carolina.

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Atlantic Mutual Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $26,476,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company. BUSINESS ADDRESS: P. O. Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $66,025,000. SURETY LICENSES c/: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NC, ND, OH, OR, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

Automobile Insurance Company of Hartford, Connecticut (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $4,880,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Balboa Insurance Company. BUSINESS ADDRESS: 3349 Michelson Drive, Irvine, CA 92713-9702. UNDERWRITING LIMITATION b/: $7,979,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $1,711,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BITUMINOUS CASUALTY CORPORATION. BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. UNDERWRITING LIMITATION b/: $7,080,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. UNDERWRITING LIMITATION b/: $293,000. SURETY LICENSES c/: IL, IN, MO. INCORPORATED IN: Illinois.

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Boston Old Colony Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,715,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The). BUSINESS ADDRESS: P. O. Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $39,846,000. SURETY LICENSES c/: DC, FL, IL, IN, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. UNDERWRITING LIMITATION b/: $2,333,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NV, NM, ND, OR, SD, TX, WI, WY. INCORPORATED IN: Wisconsin.

Centennial Insurance Company. BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $7,059,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Century Indemnity Company. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $1,239,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Charter Oak Fire Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $8,469,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. UNDERWRITING LIMITATION b/: $5,988,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

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CIGNA Insurance Company of Illinois. BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. UNDERWRITING LIMITATION b/: $2,856,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas. BUSINESS ADDRESS: 600 East Las Colinas Blvd., SUITE: 620, Irving, TX 75039. UNDERWRITING LIMITATION b/: $2,427,000. SURETY LICENSES c/: NM, OK, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest. BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80443, Indianapolis, IN 46280. UNDERWRITING LIMITATION b/: $2,222,000. SURETY LICENSES c/: IN. INCORPORATED IN: Indiana.

CIGNA Reinsurance Company. BUSINESS ADDRESS: Two Liberty Place, 1601 Chestnut St, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $11,607,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

CIM Insurance Corporation. BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. UNDERWRITING LIMITATION b/: $1,801,000. SURETY LICENSES c/: AL, AK, DC, ID, IL, IA, ME, MD, MI, MN, MS, MO, NV, NH, NM, NY, NC, ND, OH, RI, SC, SD, TN, TX, VT, WY. INCORPORATED IN: New York.

Cincinnati Insurance Company (The). BUSINESS ADDRESS: P. O. Box 145496, Cincinnati, OH 45250-5496. UNDERWRITING LIMITATION b/: $47,642,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: Call Box 70128, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $2,002,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Commercial Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $7,825,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

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Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $24,155,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Consolidated Surety Insurance Company, Inc. BUSINESS ADDRESS: 9841 Airport Blvd., Suite: 912, Los Angeles, CA 90045. UNDERWRITING LIMITATION b/: $300,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $251,003,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $24,592,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE). BUSINESS ADDRESS: Box 431 San Patricio Plaza, PMC, San Juan, PR 00920. UNDERWRITING LIMITATION b/: $10,560,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $15,868,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company. BUSINESS ADDRESS: 11201 Douglas, Urbandale, IA 50322. UNDERWRITING LIMITATION b/: $5,275,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

Contractor's Bonding and Insurance Company. BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. UNDERWRITING LIMITATION b/: $800,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936 -3846. UNDERWRITING LIMITATION b/: $7,486,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Covenant Mutual Insurance Company. BUSINESS ADDRESS: 103 Woodland Street, Hartford, CT 06105. UNDERWRITING LIMITATION b/: $2,392,000. SURETY LICENSES c/: AL, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, ME, MD, MA, MS, MO, NV, NH, NJ, NY, OH, OR, PA, TN, TX, VT, WA, WI. INCORPORATED IN: Connecticut.

CUMBERLAND CASUALTY & SURETY COMPANY. BUSINESS ADDRESS: 1501 Second Avenue East, Tampa, FL 33605. UNDERWRITING LIMITATION b/: $1,103,000. SURETY LICENSES c/: DE, DC, FL, IN, LA, MD, MT, SC, SD, TX, WY. INCORPORATED IN: Texas.

CUMIS INSURANCE SOCIETY, INC. BUSINESS ADDRESS: 5910 Mineral Point Rd., Box 1084, Madison, WI 53705. UNDERWRITING LIMITATION b/: $10,347,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $11,898,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $1,018,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 17780 Fitch, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $609,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

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Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $6,494,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, PA, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Employers' Fire Insurance Company (The). BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $4,188,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. UNDERWRITING LIMITATION b/: $11,070,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: $20,811,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, P.O. Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: $111,369,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

ERIC Reinsurance Company. BUSINESS ADDRESS: 82 Hopmeadow Street, P.O. Box 129, Simsbury, CT 06070. UNDERWRITING LIMITATION b/: $9,153,000. SURETY LICENSES c/: CA, CT, DE, NY. INCORPORATED IN: Delaware.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: $812,000. SURETY LICENSES c/: DC, IN, KY, MD, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

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EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $2,623,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

EXPLORER INSURANCE COMPANY (THE). BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. UNDERWRITING LIMITATION b/: $828,000. SURETY LICENSES c/: AZ, CA, OR. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $367,000. SURETY LICENSES c/: AK, AZ, CA, CO, DC, IN, NV, OR, SD, UT. INCORPORATED IN: California.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $5,235,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $4,356,000. SURETY LICENSES c/: AR, CO, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, ND, OH, OK, OR, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $140,463,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $36,673,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $21,098,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

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Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $479,000. SURETY LICENSES c/: DC, IA, KS, MD. MO, TX, VA. INCORPORATED IN: Maryland.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $18,744,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $1,428,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc. BUSINESS ADDRESS: P.O. Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $5,325,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $123,773,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $49,390,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

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First Financial Insurance Company. BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. UNDERWRITING LIMITATION b/: $1,626,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OR, RI, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $5,360,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $3,974,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY. BUSINESS ADDRESS: 196 Broadway, Monticello, NY 12701. UNDERWRITING LIMITATION b/: $3,301,000. SURETY LICENSES c/: AZ, AR, CO, DE, DC, FL, GA, ID, IL, IA, KS, KY, MD, MA, MI, MS, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, SC, SD, TN, TX, VT, VA, WV, WY. INCORPORATED IN: New York.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED. BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. UNDERWRITING LIMITATION b/: $2,574,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $89,265,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $36,181,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

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General Reinsurance Corporation. BUSINESS ADDRESS: P.O. Box 10350, 695 East Main Street, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $277,947,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The). BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,344,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $3,809,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Globe Indemnity Company. BUSINESS ADDRESS: P. O. Box 1000, 9300 Arrowpoint Blvd., Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $16,712,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $3,897,000. SURETY LICENSES c/: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY. BUSINESS ADDRESS: 11111 Katy Freeway, SUITE: 1000, Houston, TX 77079. UNDERWRITING LIMITATION b/: $228,000. SURETY LICENSES c/: DE, LA, MD, NM, TX. INCORPORATED IN: Texas.

Granite State Insurance Company. BUSINESS ADDRESS: P. O. Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $1,216,000. SURETY LICENSES c/: AK, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

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Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $48,603,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $6,881,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company. BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. UNDERWRITING LIMITATION b/: $10,728,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The). BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. UNDERWRITING LIMITATION b/: $790,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio.

Hanover Insurance Company (The). BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $36,747,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. UNDERWRITING LIMITATION b/: $3,045,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2285. UNDERWRITING LIMITATION b/: $23,195,000. SURETY LICENSES c/: AL, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NM, NY, NC, OH, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

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Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $47,305,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $15,481,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $147,019,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Connecticut. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,660,000. SURETY LICENSES c/: AL, AK, CT, DE, DC, IN, MN, MO, NE, NJ, OK, PA, RI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $5,619,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,967,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MT, NE, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,737,000. SURETY LICENSES c/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

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Hartford Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $13,141,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $20,104,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $1,696,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

Home Indemnity Company (The). BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $8,242,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, 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, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Home Insurance Company (The). BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $47,307,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, GA, HI, ID, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, OH, OK, OR, PA, PR, RI, SC, TN, TX, UT, VA, WA, WY. INCORPORATED IN: New Hampshire.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $8,239,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MT, NV, NM, NY, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Texas.

Illinois National Insurance Company. BUSINESS ADDRESS: 3201 West White Oaks Drive, Springfield, IL 62703. UNDERWRITING LIMITATION b/: $2,301,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NH, NY, ND, OH, SD, TX, UT, VT, WV. INCORPORATED IN: Illinois.

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Indemnity Company of California. BUSINESS ADDRESS: 17780 Fitch, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $780,000. SURETY LICENSES c/: AZ, CA, NV, OR, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $17,284,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. UNDERWRITING LIMITATION b/: $1,788,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company. BUSINESS ADDRESS: P. O. Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,675,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, OK, WY. INCORPORATED IN: Nebraska.

INSURANCE COMPANY OF EVANSTON. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $1,921,000. SURETY LICENSES c/: DC, IL. INCORPORATED IN: Illinois.

Insurance Company of North America. BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $61,996,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $26,024,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Insurance Company of the West. BUSINESS ADDRESS: P. O. Box 85563, San Diego, CA 92186-5563. UNDERWRITING LIMITATION b/: $6,606,000. SURETY LICENSES c/: AZ, CA, CO, ID, MD, MI, MT, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: California.

Intercargo Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, SUITE: 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $1,111,000. SURETY LICENSES c/: AZ, CA, CO, FL, GA, IL, IN, LA, ME, MD, MA, MI, MO, NM, NY, OR, PA, TN, TX, VA, WI. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company. BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. UNDERWRITING LIMITATION b/: $4,835,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

INTERNATIONAL CREDIT OF NORTH AMERICA REINSURANCE INC. BUSINESS ADDRESS: 1205 Franklin Avenue, Garden City, NY 11530. UNDERWRITING LIMITATION b/: $4,300,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $1,720,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. UNDERWRITING LIMITATION b/: $4,757,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $10,083,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

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John Deere Insurance Company. BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $8,032,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The). BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: $1,585,000. SURETY LICENSES c/: CO, IL, IA, KS, MN, MO, NE, OK, SD, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,649,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

KEMPER REINSURANCE COMPANY. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $26,059,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kentucky Central Insurance Company. BUSINESS ADDRESS: Kincaid Towers, Lexington, KY 40507. UNDERWRITING LIMITATION b/: $1,301,000. SURETY LICENSES c/: AL, GA, IN, KS, KY, MD, MS, MO, NM, OH, TN, UT, VA, WV. INCORPORATED IN: Kentucky.

Lawyers Surety Corporation. BUSINESS ADDRESS: P.O. Box 569480, Dallas, TX 75356-9480. UNDERWRITING LIMITATION b/: $526,000. SURETY LICENSES c/: AL, AR, CA, DC, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $164,807,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

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Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $83,888,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $1,233,000. SURETY LICENSES c/: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: Massachusetts.

MCA Insurance Company. BUSINESS ADDRESS: 484 Central Avenue, Newark, NJ 07107-2096. UNDERWRITING LIMITATION b/: $2,376,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $788,000. SURETY LICENSES c/: AZ, CA, CO, FL, ID, IL, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

MIC Property and Casualty Insurance Corporation. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $4,075,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Michigan.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $5,940,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 5110, Southfield, MI 48086-5110. UNDERWRITING LIMITATION b/: $1,512,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

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MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $3,129,000. SURETY LICENSES c/: AL, AZ, AR, CO, IL, IA, KS, MN, MS, MO, MT, NE, NM, OK, TX, UT, WY. INCORPORATED IN: Oklahoma.

Millers Mutual Fire Insurance Company of Texas (The). BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: $4,801,000. SURETY LICENSES c/: CO, DC, ID, IL, IN, IA, LA, MI, NM, OK, OR, TX, WY. INCORPORATED IN: Texas.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. UNDERWRITING LIMITATION b/: $3,567,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NC, ND, OH, OK, SD, TN, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, P.O. Box 463, Austin, MN 55912. UNDERWRITING LIMITATION b/: $154,000. SURETY LICENSES c/: CO, MN, MT, ND. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $63,337,000. SURETY LICENSES c/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $24,871,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: New York.

National American Insurance Company. BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. UNDERWRITING LIMITATION b/: $1,291,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $503,000. SURETY LICENSES c/: AK, AZ, CA, MO, NV, WA. INCORPORATED IN: California.

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National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $14,273,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $36,761,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company. BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $785,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. UNDERWRITING LIMITATION b/: $251,955,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION. BUSINESS ADDRESS: 777 Long Ridge Road, P.O. Box 10167, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $21,969,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $8,450,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $100,647,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $260,404,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Netherlands Insurance Company (The). BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $1,379,000. SURETY LICENSES c/: AZ, CA, CT, DC, GA, ID, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $38,871,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Newark Insurance Company. BUSINESS ADDRESS: P. O. Box 1000, 9300 Arrowpoint Blvd., Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $3,166,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $20,075,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm Street, 6th Floor, Manchester, NH 03101-2596. UNDERWRITING LIMITATION b/: $2,615,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

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North Star Reinsurance Corporation. BUSINESS ADDRESS: Morris Corporate Center I, 300 Interpace Parkway, Parsippany, NJ 07054. UNDERWRITING LIMITATION b/: $10,630,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $13,885,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The). 2/ BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $12,299,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Pioneer Tower, Suite 400,, 888 S.W. Fifth Avenue, Portland, OR 97204-2018. UNDERWRITING LIMITATION b/: $1,816,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Road, SUITE: 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $305,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

Ohio Casualty Insurance Company (The). BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $46,582,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Cntr, OH 44251-5001. UNDERWRITING LIMITATION b/: $27,924,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

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Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $566,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: $22,873,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,359,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Omaha Property and Casualty Insurance Company. BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,764,000. SURETY LICENSES c/: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Delaware.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. UNDERWRITING LIMITATION b/: $19,125,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $32,126,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: P.O. Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $4,225,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

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PACIFIC STATES CASUALTY COMPANY. BUSINESS ADDRESS: 4021 Rosewood Avenue, 3rd Floor, Los Angeles, CA 90004-2932. UNDERWRITING LIMITATION b/: $1,867,000. SURETY LICENSES c/: AZ, CA, CO, NV, WA, WY. INCORPORATED IN: California.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $9,759,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $1,891,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $19,720,000. SURETY LICENSES c/: AK, AZ, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: 15 Public Square, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $3,772,000. SURETY LICENSES c/: CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. UNDERWRITING LIMITATION b/: $12,376,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Personal Service Insurance Co. (The). BUSINESS ADDRESS: P.O. BOX 1226, COLUMBUS, OH 43216-1226. UNDERWRITING LIMITATION b/: $2,570,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: OHIO.

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Phoenix Assurance Company of New York. BUSINESS ADDRESS: 4 World Trade Center, SUITE: 6274, New York, NY 10048. UNDERWRITING LIMITATION b/: $6,342,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $50,124,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

PINNACLE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1919, Carrollton, GA 30117. UNDERWRITING LIMITATION b/: $423,000. SURETY LICENSES c/: AL, AK, AR, CO, DC, FL, GA, IN, KS, LA, MD, MS, OH, OK, SC, TN, TX, UT, WY. INCORPORATED IN: Georgia.

PLANET INDEMNITY COMPANY. BUSINESS ADDRESS: 410 17th Street, SUITE: 1675, Denver, CO 80202. UNDERWRITING LIMITATION b/: $366,000. SURETY LICENSES c/: CO, NM, TX. INCORPORATED IN: Colorado.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $721,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

PREFERRED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. UNDERWRITING LIMITATION b/: $641,000. SURETY LICENSES c/: FL. INCORPORATED IN: FLORIDA.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: 6000 Parkland Boulevard, Mayfield Hts., OH 44124. UNDERWRITING LIMITATION b/: $34,907,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

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Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: $8,875,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4077. UNDERWRITING LIMITATION b/: $50,896,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, ND, OH, OR, PA, PR, RI, SD, TN, TX, UT, VT, WA, WI. INCORPORATED IN: Delaware.

Ranger Insurance Company. BUSINESS ADDRESS: P. O. Box 2807, Houston, TX 77252. UNDERWRITING LIMITATION b/: $2,500,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

REGENCY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 190, Hallandale, FL 33008-0190. UNDERWRITING LIMITATION b/: $250,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Reinsurance Corporation of New York (The). BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $6,140,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $45,274,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,072,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

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Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: $10,294,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

Royal Indemnity Company. BUSINESS ADDRESS: P. O. Box 1000, 9300 Arrowpoint Blvd., Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $11,477,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Royal Insurance Company of America. BUSINESS ADDRESS: P. O. Box 1000, 9300 Arrowpoint Blvd., Charlotte, NC 28201-1000. UNDERWRITING LIMITATION b/: $20,171,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $52,374,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: 1900 West Hassell Rd., Hoffman Estates, IL 60196. UNDERWRITING LIMITATION b/: $5,747,000. SURETY LICENSES c/: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $4,397,000. SURETY LICENSES c/: CO, MO, NY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY. BUSINESS ADDRESS: 110 William Street, 18th Floor, New York, NY 10038. UNDERWRITING LIMITATION b/: $12,329,000. SURETY LICENSES c/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, LA, MD, MA, MN, MS, NE, NV, NJ, NM, NY, OH, OR, PA, SC, TX, VT, WA, WY. INCORPORATED IN: New York.

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Seaboard Surety Company. BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. UNDERWRITING LIMITATION b/: $7,217,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $1,102,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, MO, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221-1771. UNDERWRITING LIMITATION b/: $1,710,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $17,748,000. SURETY LICENSES c/: DE, DC, FL, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: P.O. Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $1,118,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $59,832,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. UNDERWRITING LIMITATION b/: $31,161,000. SURETY LICENSES c/: AL, AZ, CA, DE, DC, GA, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

See Footnotes at end of Circular

South Carolina Insurance Company. BUSINESS ADDRESS: P.O. Box 1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: $4,461,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: South Carolina.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $146,459,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $2,115,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $4,000,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The). BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $31,372,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $22,217,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, IL, IN, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes at end of Circular

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $241,081,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

State Surety Company. BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $417,000. SURETY LICENSES c/: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, SD, WI, WY. INCORPORATED IN: Iowa.

Statewide Insurance Company. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. UNDERWRITING LIMITATION b/: $285,000. SURETY LICENSES c/: AZ, AR, IL, IA. INCORPORATED IN: Illinois.

SUN INSURANCE COMPANY OF NEW YORK. BUSINESS ADDRESS: 4 World Trade Center, New York, NY 10048. UNDERWRITING LIMITATION b/: $5,831,000. SURETY LICENSES c/: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, OH, OK, OR, PA, PR, RI, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 1067, Northridge, CA 91328. UNDERWRITING LIMITATION b/: $310,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: Diamond Shamrock Tower, 717 North Harwood, Dallas, TX 75201. UNDERWRITING LIMITATION b/: $557,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

Transamerica Insurance Company. BUSINESS ADDRESS: 6300 Canoga Avenue, Woodland Hills, CA 91367. UNDERWRITING LIMITATION b/: $76,705,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 103 West Michigan Avenue, Battle Creek, MI 49016. UNDERWRITING LIMITATION b/: $561,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, MO, OH, SD, TX, UT. INCORPORATED IN: Michigan.

See Footnotes at end of Circular

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. UNDERWRITING LIMITATION b/: $9,065,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $14,033,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $5,682,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $109,006,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $6,641,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Illinois (The). BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $2,215,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes at end of Circular

Travelers Indemnity Company of Rhode Island (The). BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. UNDERWRITING LIMITATION b/: $16,268,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $3,232,000. SURETY LICENSES c/: DC, IA, NE, ND, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $53,434,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, IL, IN, IA, KS, KY, LA, MI, MO, NE, NM, OH, OK, OR, TX, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: $593,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, MO, NE, OH, OK, TX. INCORPORATED IN: Kansas.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $6,715,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

U.S. Capital Insurance Company. BUSINESS ADDRESS: 4 West Red Oak Lane, White Plains, NY 10604. UNDERWRITING LIMITATION b/: $1,982,000. SURETY LICENSES c/: AZ, FL, IN, MD, MI, NY, PA, TX, UT, WI. INCORPORATED IN: New York.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $5,232,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CO, CT, DE, DC, GA, HI, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI. INCORPORATED IN: Delaware.

Underwriters Indemnity Company. BUSINESS ADDRESS: 8 Greenway Plaza, SUITE: 400, Houston, TX 77046. UNDERWRITING LIMITATION b/: $284,000. SURETY LICENSES c/: AL, CA, CO, GA, KS, KY, LA, MS, MT, NE, NV, NM, ND, OH, OK, SD, TN, TX, UT, WV, WI, WY. INCORPORATED IN: Texas.

See Footnotes at end of Circular

Unigard Security Insurance Company. BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. UNDERWRITING LIMITATION b/: $8,577,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $2,024,000. SURETY LICENSES c/: AR, CO, DC, ID, IA, KS, MD, MN, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company. BUSINESS ADDRESS: 1400 Lake Hearn Drive, Atlanta, GA 30319. UNDERWRITING LIMITATION b/: $6,379,000. SURETY LICENSES c/: AZ, WI. INCORPORATED IN: Wisconsin.

United Coastal Insurance Company. BUSINESS ADDRESS: P.O. Box 2350, 233 Main Street, New Britain, CT 06050-2350. UNDERWRITING LIMITATION b/: $2,924,000. SURETY LICENSES c/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company. BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $8,356,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $7,661,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $27,978,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,594,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

See footnotes at end of Circular

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: Post Office Box 1138, 100 Light Street, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $72,613,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNIVERSAL BONDING INSURANCE COMPANY. BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. UNDERWRITING LIMITATION b/: $438,000. SURETY LICENSES c/: NJ. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $2,514,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,344,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: 1812 Durham, Houston, TX 77007. UNDERWRITING LIMITATION b/: $313,000. SURETY LICENSES c/: AL, AR, CO, FL, KS, LA, MS, OK, TX. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. UNDERWRITING LIMITATION b/: $25,588,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $9,983,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes at end of Circular

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $11,549,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED. BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. UNDERWRITING LIMITATION b/: $163,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $20,059,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company. BUSINESS ADDRESS: 1930 Thoreau Drive, SUITE: 101, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: $660,000. SURETY LICENSES c/: AL, AZ, CA, CO, DC, FL, GA, IL, IN, LA, MD, MA, MI, MS, MO, NM, NY, NC, ND, OH, OR, PA, SC, TX, VA, WA. INCORPORATED IN: Arizona.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $41,653,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

Westchester Fire Insurance Company. BUSINESS ADDRESS: 211 Mt. Airy Road, Basking Ridge, NJ 07920. UNDERWRITING LIMITATION b/: $16,159,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company. BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. UNDERWRITING LIMITATION b/: $1,951,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

See Footnotes at end of Circular

Westfield Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Cntr., OH 44251-5001. UNDERWRITING LIMITATION b/: $13,842,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: P.O. Box 5001, Westfield Cntr., OH 44251-5001. UNDERWRITING LIMITATION b/: $4,236,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio.

See Footnotes at end of Circular

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Alliance Assurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $9,205,000.

Belvedere America Reinsurance Company. BUSINESS ADDRESS: 110 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,094,000.

FOLKSAMERICA REINSURANCE COMPANY. BUSINESS ADDRESS: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,185,000.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6069. UNDERWRITING LIMITATION b/: $7,233,000.

London Assurance (The), U.S. Branch. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $16,227,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. UNDERWRITING LIMITATION b/: $36,730,000.

Sea Insurance Company, Limited (The), U.S. Branch. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $9,613,000.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: P.O. Box 1615, 15 Mountain View Road, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $14,924,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $30,028,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch. BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. UNDERWRITING LIMITATION b/: $10,875,000.

See Footnotes at end of Circular

WINTERTHUR REINSURANCE CORPORATION OF AMERICA.
BUSINESS ADDRESS: Two World Financial Center,
225 Liberty Street, 42nd Floor, New York, NY 10281.
UNDERWRITING LIMITATION b/: $15,631,000.

Zurich Insurance Company, U.S. Branch.
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196.
UNDERWRITING LIMITATION b/: $45,613 000.

See Footnotes at end of Circular

FOOTNOTES

1/ American Fire and Casualty Company changed its State of Domicile from Florida to Ohio, effective November 30, 1988.

2/ The Northern Assurance Company of America changed its State of Domicile from Vermont to Massachusetts, effective January 1, 1990.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A

surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

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July 1, 1991

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 961

Public and Indian Housing Drug Elimination Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 961

[Docket No. R-91-1541; FR-2992-N-01]

RIN 2577-AA97

Public and Indian Housing Drug Elimination Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule amends 24 CFR part 961, the Public Housing Drug Elimination Program, as authorized by chapter 2, substitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), and amended by section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625). This rule also serves as the basis for a new subpart in 24 CFR part 905 that will establish the Drug Elimination Program within the context of the consolidated program regulations for Indian Housing. The program authorizes HUD to make grants to public housing agencies (PHAs), including Indian Housing Authorities (IHAs), for use in eliminating drug-related crime. To receive funding under the Drug Elimination Program, applicants are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. Grant funds may be used for the following activities designed to eliminate drug-related crime in public and Indian housing projects:

(1) Employment of security personnel;

(2) Reimbursement of local law enforcement agencies for additional security and protective services (e.g., over and above the level of services the locality is already obligated to provide under its Cooperation Agreement with the PHA);

(3) Physical improvements designed to enhance security;

(4) The employment of one or more individuals to investigate drug-related crime on or about the real property comprising any public or Indian housing project and to provide evidence relating to such crime in any administrative or judicial proceeding;

(5) The provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(6) Programs designed to reduce use of drugs in and around public and Indian housing projects, including drug prevention, intervention, referral, and treatment programs; and

(7) Providing funding to nonprofit public housing resident management corporations and resident councils to develop security and drug abuse prevention programs involving site residents.

Comment Due Date: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug Free Neighborhoods Division, Office of Resident Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10241, Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to those submitting comments, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). Hearing-impaired individuals may reach the Rules Docket Clerk by calling the TDD number, (202) 708-3259. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Pending approval of these requirements by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this proposed rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Wendy Sherwin Swire, Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements to reflect the public comments received concerning the collection of information requirements.

Background

The Public Housing Drug Elimination Program was first authorized by chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901-11908). Implementing regulations for this program were issued by HUD at 55 FR 27598 (July 3, 1990), codified at 24 CFR part 961. Applicants eligible to receive grants under this program were public housing agencies, including Indian housing authorities.

Section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625) expanded the Drug Elimination Program to include private, for-profit and nonprofit owners of federally assisted low-income housing as eligible grant applicants and made some additional program changes, as discussed below. Because there were no funds appropriated in FY 91 for this new class of eligible assisted housing applicants, no awards in FY 1991 will be available for any owners of federally assisted low income housing. This rule only implements the NAHA amendments that affect PHAs and IHAs.

The present Drug Elimination Program at part 961 applies to both public and Indian Housing, and this proposed rule also addresses both. However, the Department intends that at the time a final rule is issued, part 961 will apply only to public housing. A rule establishing this program within the Consolidated Indian Housing Program Regulations at 24 CFR part 905 will also be issued. It is anticipated that the two rules will be very substantially similar, if not identical. Comments are specifically invited on the issue of what differences, if any, in the two rules would be appropriate and permissible under the authorizing statute.

Besides broadening the scope of eligible applicants, NAHA made a number of other significant changes in the Drug Elimination Program as it applies to public and Indian housing and they are being implemented in this rulemaking.

First, drug treatment programs designed to reduce use of drugs in an around public or Indian housing are made eligible for funding under the Drug Elimination Program. The New section dealing with drug treatment programs is found at § 961.10(f). Drug treatment funded under this section must be in or around the premises of housing projects to provide more tenants with more effective treatment. The President's 1989 National Drug Strategy states that "If drug treatment facilities are to be genuinely effective, they must be prepared to bring these services to the addict." For these reasons, and because effective treatment can help reduce the incidence of drug-related crime, funding under this program will be provided for contracting with drug treatment professionals for the treatment of residents in or around the premises of public and Indian housing projects.

The phrase "in and around" is used throughout this rule to delineate the area where eligible activities may be located. Following consultation with the Department of Health and Human Services (HHS), HUD has determined to define "in and around" as meaning, "within, or immediately adjacent to, the physical boundaries of a public or Indian housing project." This definition provides guidance for applicants to this program and is consistent with the scope of the drug treatment grants program administered by HHS for residents of public housing.

The rule provides for separate consideration of drug prevention, intervention and treatment programs. Each of these areas (prevention, intervention or treatment) may be the subject of an individual grant application.

HUD has determined that to be successful, prevention programs, must follow a comprehensive approach that takes into consideration the relationship of residents to their families, their peers, their communities and their own efforts to build better futures. Components of such a program would have to focus on not only drug education, but family counseling, youth services, and vocational and educational counseling and opportunities. In this way, a drug prevention program would address itself to the factors that lead to drug abuse. HUD recognizes that many community services are already in place that would address some of the necessary components of a successful drug prevention program, but that these services may not always be known to or accessible to public or Indian housing residents. For these reasons, the salary of a coordinator to identify relevant community services and arrange to make them available to the greatest extent possible to residents is an eligible expense under this program.

Drug intervention programs are meant to identify drug users and provide them with a positive opportunity to turn away from drug use. Eligible activities would include the training of residents and staff to recognize the signs of drug use and to intervene in a positive way to prevent drug problems from continuing once detected.

Treatment programs must be located in and around the premises of the grantee's housing or must provide for formal referrals to other programs in situations where a resident seeking treatment has other sources of funding for treatment. Grantees may use program funds to set aside special groups of drug-free housing units where residents in treatment can reside with their families and receive a full range of community and family support services while they are undergoing treatment. Grant funds may also be used to deliver necessary treatment-related services to residents and their families in their existing units.

HUD has determined that because of the limited resources of this program, the high costs involved, and the existence of other, more appropriate sources of funding, the expense of leasing, acquisition, construction or rehabilitation of a treatment facility is not eligible for funding under this program. The cost of staffing and the reasonable expense of furnishing and equipping a treatment facility are eligible activities. In addition, neither detoxification nor long-term, in-patient, residential treatment programs are eligible for funding.

Second, § 961.10(f), to be revised by this rule, dealt with "innovative programs" designed to reduce use of drugs. NAHA dropped the requirement that programs in this category be innovative, and revised § 961.10(f) which no longer makes reference to factors related to this requirement.

Third, NAHA added a requirement that tenants, along with the local government and the local community, participate in the design and implementation of activities for which applicants seek funding. Tenant participation is a component of one of the criteria by which funding applications are judged. The current drug elimination program at part 961 provides for tenant or resident participation in § 961.3 by permitting Resident Councils (RCs) and Resident Management Corporations (RMCs) to undertake specified management functions, encouraging PHAs and IHAs to make RCs and RMCs full partners in the drug elimination efforts, and where neither RMCs nor RCs exist, to share with residents the development and implementation of the program. This section is revised to include the participation of residents even where RMCs and RCs exist. In addition, § 961.18 requires that a reasonable opportunity be given for residents and their organizations to comment on an application and requires the applicant to give these comments serious consideration. This section will also require grantees to maintain for three years any written comments on the application submitted by residents or their organizations. To take into account the added emphasis in NAHA for tenant participation, § 961.3 of the proposed rule requires applicants to share with RMCs, RCs and residents, whether or not an RMC or RC exists, the development and implementation of the application and the program it proposes. In addition, § 961.20(a)(7) will require a certification by resident groups of their participation in the design and implementation of activities proposed to be funded. Certification by individual residents of an applicant's projects is not being required as impractical.

Although increasing the emphasis on the participation of individual residents in this program, HUD continues to recognize the importance of resident organizations. Wherever democratically elected tenant councils exist, the Department requires consultation with them. These forms of organized resident entities provides a vital link of resident involvement in ridding public housing communities of drug-related crime. However, the Department does not seek

to penalize smaller PHAs where resident councils have not been formed, and is permitting other forms of resident input to be used by applicants.

Fourth, NAHA added as a factor that is to be considered for the purpose of making grant selections the extent to which a drug elimination plan includes initiatives that can be sustained over a period of several years. Because of this new statutory emphasis on projecting actions ahead into the future, the requirement for each applicant to submit a plan for addressing the problem of drug-related crime on the premises of the housing administered or owned by the applicant has been focused in this rule to include a timetable for actions to be taken under the plan. The initiatives that can be sustained over a number of years beyond the grant term must be specifically identified in the application.

Fifth, in evaluating the extent of the drug-related crime problem in housing projects proposed for assistance, HUD is permitted to consider whether they are located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988.

Also with regard to evaluating the extent of the drug-related crime problem for selecting applicants under this program, HUD has determined that successful applicants who manage to reduce drug-related crime in years that they have a program under this part in place should not be penalized for this reduction when subsequently applying for program funding. Revised § 961.25(a)(iv) states that such a reduction will not be considered to the disadvantage of the applicant.

Sixth, NAHA has added a requirement that HUD audit and monitor the funding that is provided under the Drug Elimination Program. The existing Drug Elimination rule published in the July 3, 1991 **Federal Register** provided for semi-annual and post-grant reporting by grantees. This provision is maintained in the proposed rule, but is amended by deleting the reference to the Mini-grants component of the program, which is being eliminated (see below). In response to requests for guidance and to simplify the reporting process, HUD has prepared a draft reporting form, included as an appendix to this rule, that will eliminate the need for grantees to provide essay-type monitoring and audit reports. The Department specifically invites comments on the format and utility of this draft reporting form.

The revision of the Drug Elimination Program in this rule gives HUD the opportunity to clarify areas of the Program based upon the Department's experience with it so far. One such area related to the reimbursement of local law enforcement agencies for the cost of providing additional security and protective services. HUD has determined that applicants may include the cost of equipment necessary to receive the full benefit of certain additional services as an eligible incidental expense. Specifically, the Department has in mind the equipping of local law enforcement substations on the housing project premises. These on-site substations are to be used to facilitate the additional presence of local law enforcement agencies on the property owned or administered by the applicant. The Department has received many inquiries for this kind of project and has decided that it would be appropriate under this program. Communications equipment, computers accessing local, state and national security networks and databases, facsimile machines, telephone equipment, bicycles and scooters may be eligible items as incidental costs of additional services if used primarily in connection with the provision of an on-site substation.

Acquisition procedures for equipment purchased for this purpose with funding under this program must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36. Moreover, an applicant should be conservative in its request for this type of equipment. Funding is not permitted under this program for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes. The one exception to the above ruling is that funding is permitted for the leasing of vans and buses for drug prevention youth activities.

Also with respect to additional security and protective services, the rule amends the requirements of § 961.10(b) that eligible services for funding must represent an increase in services provided over the six month period immediately preceding the publication of a NOFA for this program. Services already funded under this program in accordance with part 961 in a preceding year may continue to be funded under this program and are not counted for purposes of determining an increase.

The Public Housing Drug Elimination Program and the modernization program under 24 CFR part 968 and 24 CFR part 905 each address the use of physical improvements for drug elimination purposes. The activities conducted under these programs should complement, and may not duplicate, each other. In general, it is expected that modernization program grant funds will be the primary source of funding for rehabilitation and other major physical improvements associated with the elimination of drug activities. PHAs are encouraged to apply for modernization funds for these purposes. Under no circumstances is the PHA or IHA to receive duplicate HUD funding for the same work item or activity from more than one funding source.

The types of related equipment or other expenses that may be provided for voluntary tenant patrols under the Drug Elimination Program is clarified in this rule. Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies; or to obtain ammunition, firearms or other weapons. Drug Elimination Program funds may not be used to compensate voluntary tenant patrol participants. Funding is also not permitted under § 961.10(e), voluntary tenant patrols, for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes. Use of grant funds for the purchase of this equipment would represent an expense that is neither reasonably related to, nor necessary for the operation of the tenant patrols established under this part. Rather, the purchase of this equipment would be a capital expenditure benefitting the cooperating law enforcement agency, and hence would be ineligible.

Drug Elimination Program grant funds may not be used in any way to pay for expenses incurred in the preparation of a grant application. These expenses include, but are not limited to, such costs as the payment of consultants' fees for surveys related to the application or the actual writing of the application. Because they are not directly related to any Drug Elimination Program activity authorized in the statute, and they are incurred entirely by the applicant without any prior HUD approval or review, payment of such expenses out of grant funds would be inappropriate. The Department's consistent position in this program has been that grantees are to use program funds for the purpose of implementing program activities and not for the purpose of obtaining program funds.

With this rulemaking, HUD is also implementing Section 955 of NAHA, which allows an exemption from Davis-Bacon Act requirements of volunteers under housing programs. Section 955 exempts volunteers from Davis-Bacon Act requirements if they do not receive compensation for their voluntary

services, or are paid only expenses, reasonable benefits, or a nominal fee, and they are not otherwise employed at any time in the work for which they volunteer. The implementation of this provision (which applies to all public and Indian housing, Section 8, and Community Development Block Grant programs) for the Drug Elimination Program at 24 CFR 961.29(a)(2)(iii) merely tracks the statutory language and does not involve the exercise of any discretion by HUD.

The Mini-grants component at subpart D of part 961, as published in the July 3, 1990, **Federal Register**, is being deleted in its entirety in this revision of part 961. HUD has determined that the Drug Elimination Program may be more effectively administered at this time without the Mini-grants component. The Grant administration component that occupied subpart E of the July 3, 1990, rule is being moved to subpart D. Subpart E of part 961 is being reserved for the Youth Sports Program that will be the subject of a separate rulemaking.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to PHAs, including IHAs, to eliminate drug-related crime in public and Indian housing projects. In certain instances, the PHA can provide grant funds under the program to nonprofit Resident Management Corporations and Resident Councils for certain eligible program activities. Although small entities could participate in the program, the rule would not have a significant economic impact on them.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1969. Analysis of the rule indicates that it does 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 United States-based enterprises in domestic or export markets.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project families and other residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this rule have "federalism implications" within the meaning of the Order. The rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to PHAs and IHAs to help them carry out their plans. As such, the program would help PHAs and IHAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the rule generally tracks the statute and involves little implementing discretion.

This proposed rule was listed as Item No. 1381 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

The Public Housing Drug Elimination Program is listed in the Catalog of Federal Domestic Assistance as number 14.854.

The collection of information requirements contained in this rule have been approved by OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Certain sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN.—PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM-PROPOSED RULE

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per responses	Total hours
Plan for addressing drug-related crime problems(s) includes assessment, current activities, strategy	961.15	1,000	1	1,000	24	24,000
Request for resident comments on plan and application	961.18	5,000	1	5,000	1	5,000
Application requirements: SF-424, certifications, narratives, copies of resident comments	961.20	1,000	1	1,000	32	32,000
Periodic reports on fund expenditures, data tracking change in crime statistics, completion of strategy components, problems in implementing the plan	961.28(a)	1,000	2	2,000	24	48,000
Post-grant evaluation report within 90 days upon completion of plan	961.28(b)	1,000	1	1,000	8	8,000
Total reporting burden						117,000

List of Subjects in 24 CFR Part 961

Drug abuse, drug traffic control, Grant programs—Housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24, chapter IX of the Code of Federal Regulations is proposed to be amended as set forth below:

1. 24 CFR part 961 is revised to read as follows:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Subpart A—General

Sec.
961.1 Purpose.
961.3 Encouragement of resident participation
961.5 Definitions.

Subpart B—Use of Grant Funds

961.10 Eligible and ineligible activities.

Subpart C—Application and Selection

961.15 Plan
961.18 Resident comments on grant application.
961.20 Application requirements.
961.25 Application selection.

Subpart D—Grant Administration

961.26 Grant administration.
961.28 Periodic reports.
961.29 Other Federal requirements.

Subpart E—[Reserved] Appendix A to Part 961—Public Housing Drug Elimination Grant Program Semi-Annual Report

Authority: Sec. 5127, Public and Assisted Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 961.1 Purpose.

The purposes of the Public Housing Drug Elimination Program are to:

(a) Eliminate drug-related crime in and around the real property comprising public housing projects;

(b) Encourage public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to develop a plan that includes initiatives that can be sustained over a period of several years for addressing the problem of drug-related crime in and around the premises of the public and Indian housing projects proposed for funding under this part; and

(c) Make available Federal grants to help PHAs and IHAs carry out their plans.

§ 961.3 Encouragement of resident participation.

(a) The elimination of drug-related crime in public and Indian housing projects requires the active involvement and commitment of public and Indian housing residents and their organizations. To enhance the ability of PHAs and IHAs to combat drug-related criminal activity in their projects, Resident Councils (RCs) and Resident Management Corporations (RMCs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964 and 24 CFR part 905. The Department encourages PHAs and IHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. The Department requires PHAs and IHAs to work with RMCs and RCs, where they exist, and project residents in the development of the grant application and the implementation of the program. Areas in which this partnership can be particularly significant include (but are not limited to) the planning and execution of strategies and activities to eliminate drug-related crime in public and Indian housing projects, the institution of voluntary tenant patrols, and the development by RMCs and incorporated RCs of security and drug-abuse prevention programs involving site residents.

(b) To emphasize the importance that the Department attaches to full resident participation in activities assigned under this part, it requires applicants to:

(1) Give residents, as well as RMCs and RCs in the targeted projects, a reasonable opportunity to comment on the application, participate in the development of the application and the implementation of funded programs; and

(2) Give serious consideration to these comments in developing the application.

§ 961.5 Definitions.

Applicant means a PHA or an IHA that applies for a Drug Elimination Grant under this part.

Chief executive officer of a State or a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Confidential informant means a person who provides an investigator with confidential information concerning a past or projected crime and does not wish to be known as the source of the information.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

Drug-related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, a controlled substance.

Drug intervention means a process to identify drug users and to assist them in modifying their behavior and/or refer them to early drug treatment to eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors affecting individuals, including activities, environmental influences, risks and expectations, that lead to drug abuse.

Drug treatment means a program for the residents of an applicant's housing that strives to end abuse of drugs and to eliminate their negative effects through treatment, rehabilitation, and relapse prevention.

Governmental jurisidiction means the unit of general local government, State, or Indian tribe in which the public or Indian housing project administered by the applicant is located.

Grantee means an applicant that executes a grant agreement with HUD.

In and around means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

Informant means a person who gives information to the investigator. The person may do this openly and even offer to be a witness, or the person may inform surreptitiously and request to remain anonymous.

High intensity drug trafficking areas means housing projects located in high intensity drug trafficking areas designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988.

HUD or *Department* means the United States Department of Housing and Urban Development.

Indian means any person recognized as being an Indian or Alaska Native by

an Indian tribe, the Federal Government, or any State.

Indian Housing Authority (IHA) means any entity that:

(1) Is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(2) Is established either by exercise of the power of self-government of an Indian tribe independent of State law, or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Local law enforcement agency means a policy department, sheriff's office, or other entity of the governmental jurisdiction that has *law enforcement responsibilities* for the community at large, including the public or Indian housing projects administered by the applicant. In Indian jurisdictions, this also includes tribal prosecutors that assume law enforcement functions analogous to a police department of the BIA. More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's projects.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized under the United States Housing Act of 1937 (other than under section 8) to engage in or assist in the development or operation of housing for low income families.

Public housing project or *project* means low income housing and all necessary appurtenances developed, acquired, or assisted by a PHA or an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings indentified in the Annual Contributions Contract (ACC) that is executed beween HUD and the PHA or IHA.

Resident Council (RC) means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one project or in all of the projects of a PHA or IHA, but it must fairly represent residents from each project that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the project or projects that the resident organization or resident council represents.

Resident Management Corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 or a IHA under 24 CFR part 905, or with an IHA in accordance with the requirements of this part. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation and;

(ii) Has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(5) Its voting members must be residents of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of part 964 or part 905 of this chapter for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RC so long as the corporation meets the requirements of this part for a resident council.)

Single State Agency means an agency responsible for licensing and monitoring state drug abuse programs.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Subpart B—Use of Grant Funds

§ 961.10 Eligible and ineligible activities.

Activities assisted under this part must be directed toward the elimination of drug-related crime in public and Indian housing projects, and may include one or more of the following activities. Incidental costs related to carrying out these activities are also eligible program costs, provided the PHA or IHA has in place a cost allocation plan. However, grant funds awarded under this part may not be used in any way to pay for expenses incurred in the preparation of a grant application.

(a) *Security personnel.* (1) Employment of security personnel in public and Indian housing projects is permitted under this program. Security personnel employed under this section shall be required as a condition of employment to meet all relevant State, tribal or local insurance, training, licensing, or other similar requirements.

(2) Security personnel shall not be employed under this section to provide any services except those over and above what the local government is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). A PHA or IHA grantee must demonstrate and document that any security services funded under this section are over and above what the local government is contractually obliged to provide to the PHA or IHA.

(b) *Additional security and protective services.* (1) Reimbursement of local law enforcement agencies for the cost of providing additional security and protective services for public and Indian housing projects is permitted under this program. The security and protective services provided must be either:

(i) A service that no local law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee within the six months immediately preceding the publication of a Notice of Funding Availability (NOFA) allocating assistance under this part, except for services funded under this part; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee, within the six months immediately preceding the publication of a NOFA allocating assistance under this part, except for services funded under this part.

(2) Services to be funded under this section must be over and above those that the local government where the proposed project is located is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). Grant funds shall only be used to pay for the cost of additional law enforcement services over and above those for which the local government is already contractually obligated to provide under the Cooperation Agreement. The additional services shall be verifiable through time sheets and written work assignments.

(3) Communications equipment, computers accessing local, State and national security networks and databases, facsimile machines, telephone equipment, bicycles, and scooters may be eligible items as incidental costs if used primarily in connection with the provision of additional services, such as the establishment of a law enforcement substation on the funded premises of the grantee. Acquisition procedures for equipment purchased with funding under this section must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36.

(4) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for or maintenance of security dogs for use by local law enforcement agencies.

(5) Funding is not permitted for compensating informants or confidential informants.

(6) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes.

(7) Funding is not permitted to purchase or lease any clothing or equipment that would be normally provided by the law enforcement agency, i.e., uniforms, weapons, protective vests, etc.

(8) Funding under this section is only permitted if the grantee has executed a HUD-approved agreement for such additional law enforcement services.

(c) *Physical improvements to enhance security.* (1) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public and Indian housing projects that are designed to enhance security and discourage drug-related activities.

(2) An activity or project that is funded under any other HUD program, such as the modernization program at 24 CFR part 968 or 24 CFR part 905, shall not also be funded by the program under this section.

(3) Funding is not permitted for physical improvements that involve the demolition of any units in a project.

(4) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(5) Funding is not permitted for the acquisition of real property.

(d) *Employment of investigators.* (1) Employment of one or more individuals is permitted under this program to:

(i) Investigate drug-related crime in or around the real property comprising any public or Indian housing project; and

(ii) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) Investigators employed under this section are required as a condition of employment to meet all relevant State, tribal, or local training, insurance, licensing, or other similar requirements.

(3) Funding is not permitted for the purchase of controlled substances for any purpose, including use in sting operations.

(4) Funding is not permitted for compensating informants or confidential informants.

(e) *Voluntary tenant patrols.* (1) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant partrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the project that the tenant patrol represents. Patrols established under this section are expected to undertake surveillance for drug-related criminal activity in the projects proposed for assistance, and to report such activities to the cooperating local law enforcement agency. Grantees are required under § 961.26(b) to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this section. The cost of this insurance will be considered an eligible program expense.

(2) The applicant, cooperating local law enforcement agency and the members of the tenant patrol are required, prior to putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the tenant patrol, and the patrol's scope of authority;

(ii) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required prior to putting the tenant patrol into effect);

(iv) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a PHA's or IHA's liability insurance.

(3) Tenant patrols established under this section are required to meet all relevant State, local or tribal training, insurance, licensing, or other similar, requirements.

(4) Communication equipment eligible for funding under this section shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(5) Related equipment eligible for funding under this section shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(6) Funding is not permitted to obtain ammunition, forearms or other weapons. Tenant patrols are expressly prohibited from carrying or using firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program.

(7) Under this section, bicycles and uniforms (caps and other clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets, to be worn by the members of the tenant patrol) may be eligible items.

(8) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies.

(9) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles or motor bikes, bullet-proof vests, e'c.

(10) Funding is not permitted for compensating informants or confidential informants.

(11) Drug Elimination Program funds may not be used for any type of compensation for voluntary tenant patrol participants.

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug prevention.* Programs that will be considered for funding under this provision must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs should include activities designed to identify and change the factors prevent in public housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) *Drug education opportunities for public and Indian housing residents.* The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee developed under § 961.15. These educational opportunities may be a part of resident meetings, youth activities, or other gathering of public and Indian housing residents.

(ii) *Family and other support services.* Programs under this paragraph must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing families.

(iii) *Youth services.* Programs under this paragraph must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) *Economic/educational opportunities for residents and youth.* Programs under this section may demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of development or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this section shall be in or around the premises of housing projects to provide tenants more effective and economic treatment.

(ii) Treatment professionals hired under this section are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this announcement are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) Increase resident accessbility to drug treatment services;

(B) Decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) Provide services designed for youth and/or maternal drug abusers, i.e., prenatal/postpartum care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free housing units specially set aside for residents in treatment and their families, if any, who normally reside with them, and intensive outpatient and aftercare components, all of which must be on-site. Grant funds may also be used to provide necessary treatment-related services to residents and thier families in their existing units. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphasis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or state licensure provider must certify that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment provider(s) meets all State licensing requirements.

(4) Funding is not permitted for treatment of residents at long-term, in-patient treatment programs, or any programs not in or around the premises of the grantee's housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are intended to be prescribed regularly over an extended period of supportive therapy (e.g. methadone maintenance), rather than for more immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crime is not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

(g) *RMCs and RCs.* Funding under this program is permitted for PHAs and IHAs to contract with RMCs and incorporated RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, referral, and outreach efforts.

Subpart C—Application and Selection

§ 961.15 plan.

(a) *Requirement of plan.* (1) Each application for a grant under this part must include a plan for addressing the problem of a drug-related crime on the premises of the housing projects proposed for funding.

(2) None of the requirements contained in this part shall be interpreted to permit or encourage a PHA, IHA, RMC or RC from acting in violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 24 CFR part 8, or the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations issued at 24 CFR part 100, and the Indian Civil Rights Act (25 U.S.C. 1302).

(b) *Plan content.* The plan referred to in paragraph (a) of this section must contain the following elements:

(1) *Assessment of problem.* An assessment of the drug-related crime problem, and the problems associated with drug/related crime, in the projects administered by the applicant and that are proposed for funding under this part. This assessment, which must describe the nature and scope of these problems, is intended to serve as the basis and rationale for determining the applicant's drug elimination strategy for the proposed project. In addition, the assessment must identify the applicant's demonstrated need and indicate how the activities proposed for funding under this part will address that need. The assessment must include:

(i) *Objective data.* The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the projects proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's projects (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs or RCs. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the PHA's or IHA's targeted projects, and how the applicant's overall plan and strategy under paragraph (b)(3) of this section is specifically tailored to address these drug-related crime problems.

(ii) *Other data on the extent of drug-related crime.* The data provided under paragraph (b)(1)(i) of this section may, as necessary, be integrated with, and complemented by, information from other sources which have a direct bearing on drug-related crime problems in the projects proposed for assistance under this part. Examples of these data include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted projects; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.

(iii) *Methodologies.* The assessments provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section can be accomplished through a variety of methods, using more than one existing source of information. Some examples of assessments include: surveys; onsite reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies

conducted by local officials; and analysis and critique of a particular drug-related crime problem.

(iv) *Program evaluation.* The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section; discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information.

(2) *Current and past activities to address problem.* The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related crime in its targeted projects, including its efforts to implement screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR part 8.4 which deal with individuals with disabilities); its efforts to implement eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of NAHA; its efforts to implement a plan to reduce vacancies; or its other management practices to eliminate drug-related crime in the applicant's projects; the applicant should also describe its experience, if any, in implementing and managing other HUD grant programs (e.g. CIAP, youth sports, child care, etc.), and other Federal anti-drug related crime programs; describe the current activities, if any, being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant), if any, currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing;

(3) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this part must be included in the plan. At a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(i) A narrative describing each major activity in the applicant's strategy and how these components interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current services.

(ii) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this part, and from other resources) that may reasonably be expected to be available to carry out each component;

(iii) A timetable for beginning and completing each component of the strategy;

(iv) The role of tenants, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan. The applicant must provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs under § 961.10(g) involving site residents. The applicant must also describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy.

(v) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiative that can be sustained over a period of years;

(vi) If grant amounts are to be used for physical improvements under § 961.10(c), a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(vii) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects under § 961.10(f), a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention or intervention strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance.

§ 961.18 Resident comments on grant application.

The applicant must provide the residents of projects proposed for funding under this part, as well as any RMCs or RCs that represent those residents (including any PHA-wide RMC or RC), with a reasonable opportunity to comment on its application, including its plan in accordance with § 961.15, for funding under this program. The applicant must give these comments careful consideration in developing its plan and application as well as in the implementation of funded programs. Copies of all written comments submitted must be maintained by the grantee for three years.

§ 961.20 Application requirements.

(a) *Contents.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The plan prepared under § 961.15.

(3) Summaries of any written resident and resident organization comments submitted to the applicant on the design and implementation of the plan.

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information provided regarding the applicant's strategy for addressing the problem of drug-related crime in its projects, as required by § 961.15(b)(1), are both accurate and complete.

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(iii) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under § 961.10(b) meet the requirements of that section;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under § 961.15(b)(3);

(iv) That the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so.

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency that the law enforcement agency has entered into, or will enter into, an agreement with the voluntary tenant patrol and the applicant, in accordance with the requirements of § 961.10(e);

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, for a project proposed for funding under this part that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this part.

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for two prior years; that the proposed drug treatment project is consistent with the State treatment plan; and that the treatment providers meet all State licensing requirements

(10) Such additional information as the Department determines to be necessary and appropriate.

(b) *Notice of funding availability.* HUD will publish Notices of Funding Availability (NOFAs) in the Federal Register as appropriate to inform the public of the availability of grant amounts under this part. The Notices will provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications, the limits (if any) on maximum grant amounts, the maximum number of points to be awarded for each selection criterion, and the process for ranking and selecting applicants. The Notices will also include any additional factors that the Secretary has determined to be necessary and appropriate to implement the selection criteria in this part.

§ 961.25 Application selection.

(a) *Selection criteria.* Each application submitted by a PHA or IHA for a grant under this part will be evaluated on the basis of the following selection criteria:

(1) *Factor 1: The extent of the drug-related crime problem in the applicant's project or projects proposed for assistance.* In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data provided under § 961.15(b)(1)(i) on the number and types of drug-related crimes committed within the applicant's targeted projects; trend data indicating an increase or decrease in drug-related crime over a period of time; and descriptive data on the types of offenders committing drug-related crime in the applicant's projects (such as age, residence, etc.).

(B) To the extent that data under § 961.15(b)(1)(i) are not available, HUD will also consider information derived from resident/staff surveys or on-site reviews, or from the applicant's own records or those of other local agencies, on the extent of drug-related crime and the problems associated with drug-related crime, in the applicant's projects. This information may include (but is not limited to) the number of lease terminations or evictions for drug-related criminal activity; emergency room admissions for drug use or drug-related crime; vandalism costs and vacancies attributable to drug related crime; the number of residents placed in treatment for substance abuse; the school drop-out rates and absenteeism rates for youth, etc.

(C) In awarding points under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section, HUD will evaluate the extent to which the applicant has provided raw data that reflects a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents and the problems associated with drug-related crime in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance.

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected by the statistics submitted under paragraph (a)(1)(i)(A) of this section, in comparison to other applications submitted in the region for funding under this part.

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance.

(iv) A reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a program under this part will not be considered to the disadvantage of the applicant.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(2) *Factor 2: The quality of the plan to address the crime problem in the public housing projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime program (as identified in its plan assessment under § 961.15(b)(1)(i) and (b)(1)(ii)) and its strategy for eliminating drug-related crime under § 961.15(b)(3); the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (e.g., the strategy includes management practices, enforcement/security techniques, and a combination of intervention, referral, treatment and prevention programs); and the extent to which funding under this part will be targeted to the applicant's identified needs.

(ii) The extent to which the applicant's strategy is realistic, given the amount of

funding requested under this part in relation to the overall strategy, and the timetable indicated by the applicant for beginning and completing each component of the strategy; and the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (under this part and other sources) that may reasonably be expected to be available to carry out each component; describes the activities to be funded under this part and indicates how such activities will be coordinated with, and complemented by, current services; and describes how funding decisions were reached.

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (e.g. tracking of changes in identified crime statistics).

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term; and the extent to which the plan includes initiatives that can be sustained over a period of years and identifies resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(3) *Factor 3: The capability of the applicant to carry out the plan.* In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative requirements under the ACC and HUD regulations. In evaluating administrative capability under his factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; for public housing, the process made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD; and, for Indian housing, progress made toward completing its management improvement plan will be considered.

(ii) The extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public and Indian housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of the National Affordable Housing Act (Pub. L. 101–625); or undertaken other management practices to eliminate drug-related crime in its projects.

(iii) The extent of, and degree of success reflected by, the applicant's prior track record in implementing and managing HUD grant programs (including funding under this part or other grant programs such as CIAP, youth sports, child care, resident management, etc.), and other Federal drug-related grant programs.

(iv) The extent to which the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for the proposed grant under this part.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(4) *Factor 4: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which community representatives and local government officials will be actively involved in the implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding, staff, or in-kind resources.

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD).

(iii) The extent to which project tenants, and an RMC or RC, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application as reflected by information provided by the applicant in accordance with § 961.15(b)(3)(vi), augmented with information concerning tenants, the applicant's response to tenant and RMC/RC comments under § 961.18, and the certification of resident involvement provided at § 961.20(a)(7).

(iv) Such additional factors as the Department determines to be necessary and appropriate.

(b) *Environmental review.* Grants under this part are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

Subpart D—Grant Administration

§ 961.26 Grant administration

(a) *General.* The duty to use grant funds to eliminate drug-related crime in public and Indian housing projects in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee. Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part and applicable laws and regulations.

(b) *Insurance.* Each grantee is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants are required to assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, drug treatment providers and the establishment of the voluntary tenant patrols; to evaluate the qualifications and training of the individuals or firms undertaking these functions; and to consider any limitations on liability under State, local or tribal law. Grantees are required to obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 961.10(e). These insurance costs are eligible program expenses. Subgrantees are required to obtain their own liability insurance.

(c) *Subgrants (Subcontracting).* (1) A grantee may directly undertake any of the eligible activities under this part or it may contract with a qualified third party, including local law enforcement agencies, Resident Management Corporations (RMCs) and incorporated

Resident Councils (RCs). Resident organizations that are neither RMCs or incorporated RCs may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. A PHA's or IHA's Housing Development Corporation or other PHA or IHA non-profit corporation is not eligible to receive a subgrant under this part.

(2) Subgrants or cash contributions to RMCs or incorporated RCs may be made only under a written agreement executed between the grantee and the RMC or RC. The agreement must include a project budget that is acceptable to the grantee, and that is otherwise consistent with the PHA's grant application budget. The agreement must obligate the RMC or incorporated RC to permit the grantee to inspect and audit the RMC or RC financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of project activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(3) The *grantee shall be responsible for monitoring,* and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RMCs and RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) *Employment preference.* A grantee under this program shall give preference to the employment of public housing residents, in accordance with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135, to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as nonpublic housing resident applicants. For Indian housing, the Indian preference in accordance with 25 U.S.C. 450(e) must be used first before resident preference may be allowed. Except where the labor standards requirements of § 961.29(a)(1) are applicable, a public housing resident employed under this section may choose to receive compensation for his or her services either in the form of payment, as a credit to the resident's account, or as payment of back rent owed to the grantee. Voluntary tenant patrol participants are not eligible for compensation from Drug Elimination Program funds.

(e) *Applicability of OMB Circulars and HUD fiscal and audit controls.* The policies, guidelines, and requirements of 24 CFR part 85 and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this part; and OMB Circulars Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs and RCs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44); and OMB Circular No. A–133).

(f) *Grant term and obligation of grant funds.* Grantees are required to use grant amounts under this part according to their approved workplan, which generally shall not exceed 24 months.

(g) *Sanctions.* If HUD determines that a grantee is not complying with the requirements of this part or of other applicable Federal law, or if a grantee fails to make satisfactory progress toward its drug elimination goals, as specified in its plan strategy under § 961.15(b)(3) and as reflected in its progress reports under § 961.28, or if a grantee files a false certification, for example, as to the services provided under the Cooperation Agreement by the local jurisdiction, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Conditions a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

§ 961.28 Periodic reports.

Grantees are required to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the plan described and any change in the incidence of drug-related crime in projects assisted.

(a) *Semi-annual progress reports.* Grantees must provide the Field Office with semi-annual progress reports that evaluate the grantee's progress against its plan, as outlined in Appendix A. These reports will be submitted 120 calendar days after the Drug Elimination Program budget has been approved to the Field Office or Office of Indian Programs, as appropriate. These reports must also include in summary form (but are not limited to) the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; a description of any other programs that may have been initiated or expanded as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(b) *Post-grant report.* A post-grant evaluation must be submitted to the Field Office or Office of Indian Programs, as appropriate, within 90 days upon completion of the plan, using at a minimum the evaluation criteria for the semi-annual reports.

§ 961.29 Other Federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Labor standards.* (1) Where grant funds are used to undertake physical improvements to increase security under § 961.10(c), the following labor standards apply:

(i) The grantee and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the development of the project, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(B) For laborers and mechanics employed in carrying out non-routine maintenance in the project, the HUD-determined prevailing wage rate. As used in this subsection, non-routine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of

a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Non-routine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not non-routine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(2) The provisions of paragraph (a)(1) of this section shall not apply to labor contributed under the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents of a project managed by the resident management corporation to volunteer a portion of their labor;

(ii) A family selected for housing under the Indian Mutual Help Homeownership Opportunity Program may contribute labor toward the development cost of the project;

(iii) An individual may volunteer to perform services if:

(A) The individual does not receive compensation for the voluntary services, or, is paid expenses, reasonable benefits, or a nominal fee for voluntary services; and

(B) Is not otherwise employed at any time in the work subject to paragraph (a)(1)(i) (A) or (B) of this section.

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply to this program:

(1) The requirements of The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations issued at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended or ineligible contractors.* Use of grant funds under this program requires compliance with the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in eligibility status.

(d) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79; or

(ii) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(2) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(e) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 965, subpart H (51 FR 27789–27791, August 1, 1986) apply to activities under this program as set out below. This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 961.10(c).

(2) *Definitions.* The term *applicable surfaces* means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section:

(i) Installation of security devices;

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(f) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85, no person, as described in paragraphs (f) (1) and (2) of this section, may obtain a personal or financial interest or benefit from an activity funded under this program, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities.

(g) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F apply to this program.

(h) *Anti-lobbying provisions under section 319.* On February 26, 1990, the Department published an interim final rule at 55 FR 6736 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants,

cooperative agreements, or loans unless the reciepient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

(2) The certification and disclosure requirements apply to all grants in excess of $100,000. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 55 FR 6737 (February 26, 1990) for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3 apply to this program.

(j) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)), and the Indian preference rules in the IHA procurement regulations at 24 CFR part 905, subpart B, apply to IHAs. These provisions require, to the greatest extent feasible, that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

Appendix A to 24 CFR Part 961—Public Housing Drug Elimination Grant Program Semi-Annual Report

HUD Region: _____
Field Office: _____
PHA/IHA Location: _____
No. Units _____
Duration of Grant: _____
Date Budget Approved: _____
Amount of Grant: $ _____
Total Drawdown: $ _____

WORKPLAN

Task/activity	Original timetable begin date	Original timetable end date	On schedule? Yes/No	Budget expenditures	Equipment	Itemized cost of equipment/ activity	Ineligible activity? Yes/No
(Example) #1 Tenant Patrol	01/01/91	01/01/93	Yes	$10,000	Radio	$2,000	No.

Comments/Observations:

REVIEWER: _____
TITLE: _____
DATE OF REVIEW: _____

Subpart E—[Reserved]

Dated: June 5, 1991.

Michael B. Janis

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91–15482 Filed 6–28–91; 8:45 am]

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federal register

Monday
July 1, 1991

Part VII

Environmental Protection Agency

40 CFR Parts 261 et al.

Identification and Listing of Hazardous Waste; Wood Preserving; Technical Corrections

Environmental Protection Agency

40 CFR parts 261, 262, 264, 265, and 270

[FRL-3968-8]

Identification and Listing of Hazrdous Waste; Wood Preserving; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the **Federal Register** on December 6, 1990 (55 FR 50450). In that rule, EPA promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add three categories of wastes to the list of hazardous wastes from non-specific sources (40 CFR 261.31). These wastes, designated F032, F034, and F035, are generated from wood preserving processes that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium, respectively. EPA also promulgated standards for permitting an interim status for drip pads used to assist in the collection of treated wood drippage. This notice corrects errors and clarifies language in the preamble and regulations of the December 6, 1990 final rule.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll–free) or (703) 920–9810 in the Washington, DC metropolitan area. For technical information, contact Mr. Edward L. Freedman, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Notice

The Agency has received numerous comments from the regulated community and State agencies identifying typographical errors in the December 6, 1990 final rule, and requesting clarification on certain aspects of the preamble and regulations. Today's notice corrects these errors and responds to other concerns raised by commenters.

II. Summary of Corrections and Clarifications to the Wood Preserving Wastes Final Rule

Below is a brief explanation of substantive changes to the preamble and regulations in the December 6, 1990 final rule, as well as clarifications of several issues.

Note: The corrections discussed below reflect the renumbering of the part 264, subpart W regulations (see part IV below). In addition, the substantive corrections to sections in part 264 listed here have been incorporated in the reprinted text of part 264, subpart W, later in this notice.

1. In the December 6, 1990 final rule, EPA amended section 261.4 by adding paragraph (a)(9). This paragraph excluded from the definition of solid waste, spent wood preserving solutions that have been reclaimed and are reused for their intended purpose. The exclusion applies after the spent preserving solutions are reclaimed. It was the Agency's intent to also exclude wastewaters containing spent preservative, when they are reclaimed and reused at the plant to treat wood. The exclusion would apply whether the waters are applied directly or indirectly to the wood being treated. For example, wastewaters that are reclaimed and then used in a boiler to generate steam that is reused in the process would be excluded, as would waters reused as makeup water in the work tank to dilute concentrated commercial formulations.

The exclusion from the definition of solid waste would take effect after the wastewaters are reclaimed (see § 261.3 (c)(2) final sentence, materials normally stop being a waste after they are reclaimed). This is also true of the spent preservatives. EPA is adjusting the language of the exclusion (§ 261.4(a)(9)) to make clear that both spent preserving solutions and wastewater are solid and hazardous wastes until they are reclaimed (normally by filtration), but cease being solid wastes once reclamation is completed if the reclaimed material is used to treat wood.

In addition, the wording of paragraph (a)(9) in § 261.4 is redundant in that it refers to "spent wood preserving solutions that have been used." A "spent material" is defined as a material that has been used. Therefore, for the reasons discussed above, § 261.4, paragraph (a)(9) is being amended today.

EPA has also received questions regarding the status of other wastewaters which are reused beneficially at wood preserving plants but do not come into contact with the treated wood itself. These uses are addressed by current regulations (40 CFR 261.2), which should be consulted for specific situations. However, under these rules, wastewaters put to direct use normally are not solid wastes, nor are wastewaters that are reused after being reclaimed, provided that the subsequent reuse does not involve placement on the land or combustion. Thus, reclaimed waters used as vacuum pump seal water, or as scrubbing water in an odor scrubber, would not be solid wastes (§ 261.3(c)(2)(i)). Process water that is used directly as cooling tower makeup water, and which is then cooled and reused, also would not normally be a solid waste. (See § 261.2(e)(1)(ii).)

2. The December 6, 1990 final rule added § 261.35, which provides a process by which generators who previously used chlorophenolic preservatives may have the F032 waste code deleted from their wastes if they follow certain equipment cleaning or replacement steps. However, the language in this section does not communicate the options available to the generator in the way the Agency intended. EPA originally intended that a generator of cross-contaminated waste be given three options to follow in order to have the F032 code deleted. These were as follows: (1) Clean equipment; (2) replace equipment; or (e) document that previous cleaning and/or replacement occurred after termination of use of chlorophenolic formulations (55 FR 50457). The way § 261.35 was promulgated, these three options are not clearly set forth. Consequently, § 261.35 is being amended by revising paragraph (b) to clarify the Agency's intent. It is important to note that Method 8290, which is referenced in § 261.35 as the method to use in determining whether equipment is "clean," has not yet been approved and formally incorporated into SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. However, although it has not been so incorporated, Method 8290 is a valid method and it must be used for purposes of compliance with § 261.35. Method 8290 will be part of the Second Update to the Third Edition of SW–846, to be proposed later this summer.

3. The final rule amended § 262.34 by adding a new paragraph (a)(2) and renumbering paragraphs (a)(2) through (a)(4). The final rule did not amend paragraph (d)(4) of § 262.34, however, which requires compliance with paragraphs (a)(2) and fat (3) of that section. As a result, paragraph (d)(4) no longer refers to the correct paragraphs for compliance with container marking and container/tank labeling requirements. The January 31, 1991

Federal Register (56 FR 3877) amended § 262.34 paragraph (d)(4), but failed to correct the erroneous reference to paragraph (a)(2). For this reason, § 262.34 is amended today by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and revising the language in paragraph (a)(1).

4. In the December 6, 1990 final rule, the definition of drip pad states that drip pads are designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system (40 CFR 260.10, 55 FR 50482). However, the applicability of the subpart W drip pad standards refers to facilities that use drip pads to convey treated wood drippage only. This was an error of omission on the part of the Agency. Precipitation and surface water run-on should also be included as materials that may be conveyed using a drip pad subject to subpart W standards, as drip pads are routinely and appropriately used to convey such waters. Therefore, the Agency is amending the applicability sections, 40 CFR 264.570 and 265.440, to include the terms "precipitation" and "surface water run-on." Surface water run-on includes wash waters that may be used for periodic cleaning of the drip pad.

5. Section 264.573, paragraph (b) begins "A drip pad must have:" The comparable language in part 265 (§ 265.443(b)) addresses new and existing drip pads separately and refers to the deadlines for upgrading pads. This language was inadvertently omitted from part 264. Consequently, § 264.573 is being amended to add this language.

6. Section 264.573(b)(2) contains a subsection (ii) that reads "Designed and operated to function without clogging through the scheduled closure of the drip pad." The corresponding language in Part 265 was inadvertently omitted. The Agency intended that both permitted and interim status drip pads be maintained with leakage detection systems that function without clogging. Therefore, § 265.443 is being amended to add this language.

7. Sections 264.573 and 265.443, paragraph (m), set out the procedures to be followed in the event an owner/operator detects a drip pad condition that requires repair. The current language refers to "a condition that could lead to or has caused a release of hazardous waste * * *" The Agency believes this language is overly broad, encompassing many non-threatening drip pad conditions, since almost any condition could eventually "lead to a release." The Agency did not intend for conditions that merely "could lead" to a release to trigger automatic repairs. Therefore, the language in paragraph (m) in these two sections is being amended to narrow the scope of drip pad conditions requiring action to those situations where the condition has caused or could have caused a release.

It was not the Agency's intent to require reporting to the Regional Administrator for each repair made to a drip pad. It is EPA's concern, however, that owner/operators of drip pads practice preventive maintenance in order to avoid releases of hazardous waste to the environment. If a condition has led to a release of hazardous waste, or there has been a release and a particular condition (e.g., cracks or deterioration) may have caused that release, notifying the RA of the condition and the steps taken to repair it will be required. However, if a condition that could potentially lead to a release in the future is detected (e.g., a hairline crack), no notification is necessary if that condition is not associated with any releases of hazardous waste. In such a case, however, the procedures in paragraph (m) for making repairs in a timely fashion are still applicable.

8. The Agency has been informed that the Subpart W operating standards have been interpreted to require weekly water washing of drip pads (existing § 264.572(i)). This was not EPA's intent. Rather, the Agency requires that a drip pad be cleaned in a manner and frequency sufficient to allow weekly inspections of the pad, as required under existing § 264.573(b). However, such cleaning need not involve water washing. For example, weekly sweeping is sufficient if the pad is clean enough to inspect. EPA also plans to revisit the issue of weekly cleaning in a proposed rule to be published in the near future.

Note: Existing section numbers were used in this discussion for ease of reference. Sections 264.572 and 264.573 will become §§ 264.573 and 264.574, respectively.

9. Some members of the regulated community are interpreting the standards for cleanup of drip pad leakage to require digging up the drip pad in all situations. This is not the case. Pursuant to § 264.573(m)(1)(iii), an owner/operator who detects a drip pad condition that may have caused or has caused a release of hazardous waste must determine how to repair the drip pad and clean up any leakage from below the pad. If the drip pad has a leakage collection system below the pad, or a drainage system leading to a sump, the owner/operator need not dig up the pad. EPA considers a leakage collection or drainage system to satisfy the requirement for cleanup beneath the pad. However, if the drip pad has no such system, or a leakage collection system fails, resulting in a release of hazardous waste to the environment, then the drip pad must be removed to the extent that underlying contamination can be cleaned up.

10. There is one final issue that requires clarification regarding the listings for wood preserving wastes promulgated on December 6, 1990. Concerns have been raised regarding the generation of waste at shutdown or abandoned wood preserving plants with respect to the new listings. For example, if a cleanup operation is conducted at a closed plant that used preservatives covered by the listings, and this cleanup takes place after the effective date of the listings, the preservative-contaminated soil and materials removed from the site would be regulated as hazardous wastes. Hazardous waste listings under RCRA apply to wastes whose management ceased prior to the effective date of the rule listing or identifying them as hazardous. This is because the material meets the listing description, or is derived from the listed waste, or is contained in environmental media. This does not mean that wastes that have been previously disposed must be exhumed for proper management once a rule listing them as hazardous is promulgated. However, if such wastes are being actively managed (e.g., excavated, stored) after the effective date of a rule identifying them as hazardous, they must be managed in accordance with all applicable listings and any other requirements under RCRA. (For a more detailed discussion of this issue, see the August 17, 1988 Federal Register, 53 FR 31148. The Agency's approach to this issue was upheld by the D.C. Circuit in *Chemical Waste Management* v. *EPA*, 869 F. 2d 1526 (D.C. Cir. 1989).)

In our example of a cleanup operation at a closed wood preserving plant, the soil and materials removed from the site would "contain" one or more listed hazardous wastes, and therefore, would be regulated as hazardous waste after the effective date of the listings. (See June 19, 1989 letter from EPA to the New York State Department of Environmental Conservation for a discussion of the "contained-in" policy.)

III. Issues Concerning the Applicability of Subpart W

There has been confusion in the regulated community over several issues concerning the applicability of the subpart W drip pad standards.

Clarifications of these issues are provided in this section. First, the final rule is unclear as to whether the subpart W drip pad standards apply to drip pads used to manage preservative drippage that exhibits a characteristic of hazardous waste, or if they apply only to drip pads managing drippage meeting the F032, F034, or F035 listing descriptions. If an owner/operator of a wood preserving plant is subject to subpart W (i.e., if he uses a drip pad to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system), Subpart W applies, whether the material being conveyed exhibits a hazardous waste characteristic or meets a hazardous waste listing.

A drip pad is not to be used for the management of materials other than drippage, precipitation, or surface water run-on. For example, sludges or spent preservative other than drippage are not to be managed on drip pads. Wash waters applied by the owner/operator for cleaning of the drip pad do fall within the meaning of surface water run-on. Section 262.34 authorizes accumulation of hazardous waste for 90-days or less provided that the waste is placed on drip pads and the generator complies with Subpart W. Because the applicability of Subpart W is limited to drip pads managing treated wood drippage, precipitation, and/or surface water run-on (including wash waters), other types of hazardous waste may not be accumulated on drip pads for purposes of § 262.34. Accumulation in containers or tanks is possible for these other hazardous wastes.

Secondly, questions have been raised regarding the applicability of the subpart W standards to wood preserving plants that hold treated wood in the treatment cylinder until all drippage ceases. The subpart W requirements apply to owners and operators of facilities that use drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Facilities that do not generate drippage in a process or kick-back area are not subject to subpart W.

Another issue regarding the applicability of subpart W involves wastewater treatment systems at wood preserving plants. Some members of the regulated community have interpreted the subpart W standards to require drip pads under wastewater treatment trains downstream of initial collection systems. This was not the Agency's intent. Again, subpart W applies to owners/operators of facilities that use drip pads to convey drippage, precipitation, and/or surface run-on to a collection system. "Drippage" is defined in the preamble to the final rule (55 FR 50452) as "excess preservative that is kicked back from the wood following treatment." It is at this point, in a process or "kick-back" area, where a subpart W drip pad is used.

IV. Renumbering of Sections in Part 264, Subpart W

In the December 6, 1990 final rule, the order of the sections in parts 264 and 265, subpart W does not correspond. The part 265 sections are ordered and numbered correctly. In part 264, the section entitled "Design and installation of new drip pads" should follow § 264.571—Assessment of existing drip pad integrity, as it does in part 265. However, this section on new drip pads was placed at the end of the subpart in part 264, in § 264.575. Today, the Agency is correcting this misplacement by redesignating § 264.575—Design and installation of new drip pads, as § 264.572. As a result, § 264.572 is redesignated as § 264.573; § 264.573 as § 264.574; and § 264.574 as § 264.575. By reordering the sections in part 264, the last numbers of the sections in both parts 264 and 265 will correspond, easing cross-reference between parts and providing a more logical order of regulatory requirements.

For the convenience of the reader, we have printed the entire renumbered part 264, subpart W below, with all the citations corrected to correspond with the renumbered sections. The reader is reminded to cross-reference this revised set of part 264 regulations when reading the preamble to the December 6 final rule, so as not to be confused by preamble references to the old section numbers.

V. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies existing requirements by correcting a number of errors in the December 6, 1990 final rule (55 FR 50450). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking, so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective. Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

VI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical correction), the amendment is not "major;" therefore, no Regulatory Impact Analysis is required.

VII. Paperwork Reduction Act

The information collection requirements in the December 6, 1990 final rule were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. OMB has reviewed the Information Collection Request and has approved the recordkeeping and reporting requirements in the final rule. The OMB authorization number for these requirements is 2050–0115.

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: June 21, 1991.

Don R. Clay,

Assistant Administrator.

The following corrections are made in the preamble to FRL–3856–7, Identification and Listing of Hazardous Waste; Wood Preserving; Final Rule.

published in the **Federal Register** on December 6, 1990 (55 FR 50450).

1. On page 50450, in the **DATES SECTION**, change "§ 270.22 (a), (b), and (c)" to "§ 270.26 (a), (b), and (c)."

2. On page 50455, in the first column, change "§ 265.34" to "§ 262.34."

3. On page 50455, in the third column, second full paragraph, change the sentence "Drip pads must have run-on and run-off control to prevent contamination or surface water * * *" to read "Drip pads must have run-on and run-off control to prevent contamination of surface water * * *"

4. On page 50460, third column, third full paragraph, change "§ 261.4(c)(2)(i)" to "§ 261.4(a)(9)."

The following corrections are made to the rules in FRL–3856–7, Identification and Listing of Hazardous Waste; Wood Preserving; final rule, published in the **Federal Register** on December 6, 1990 (55 FR 50450).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

6. Section 261.4, paragraph (a)(9) is revised to read as follows:

§ 261.4 Exclusions.

(a) * * *

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

* * * * *

7. Section 261.35 is amended by revising paragraph (b) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW–846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. Section 262.34 is amended by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and revising paragraph (a)(1) to read as follows:

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) in containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except § 265.197(c) and § 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility;

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from all requirements in subparts G and H of 40 CFR part 265, except for § 265.111 and § 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265, with § 265.16, and with 40 CFR 268.7(a)(4).

* * * * *

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

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

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

11. Part 264 is amended by revising subpart W to read as follows:

Subpart W—Drip Pads

Sec.

264.570 Applicability.

264.571 Assessment of existing drip pad integrity.
264.572 Design and installation of new drip pads.
264.573 Design and operating requirements.
264.574 Inspections.
264.575 Closure.

Subpart W—Drip Pads

264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 264.573(e) or § 264.573(f), as appropriate.

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 264.573 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in § 264.573(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad insufficient detail to document compliance with all the requirements of § 263.573 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.573 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b)(1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline specified in paragraph (b)(1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.573, except for those for liners and lead detection systems specified in § 264.573(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 264.573 (m) of this subpart or close the drip pad in accordance with § 264.575 of this subpart.

§ 264.572 Design and installation of new drip pads.

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with all of the applicable requirements of §§ 264.573, 264.574 and 264.575 of this subpart.

§ 264.573 Design and operating requirements.

(a) Drip pads must: (1) Be constructed of non-earthern materials, excluding wood and non-structurally supported asphalt:

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily perations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: EPA will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing and Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A new drip pad or an existing drip pad, after the deadline established in § 264.571(b) of this subpart, must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact

with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(f) Unless protected by a structure or cover as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

(n) Should a permit be necessary, the Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 264.573 of this subpart by an independent qualified, registered professional engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leak detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

§ 264.575 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

(c)(1) The owner or operator of an existing drip pad, as defined in § 264.570 of this subpart, that does not comply with the liner requirements of § 264.573(b)(1) must:

(i) Include in the closure plan for the drip pad under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.112 and 264.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

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

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

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

13. Section 265.440 is amended by revising paragraph (a) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has generated a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

* * * * *

14. Section 265.443 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii), and adding paragraph (b)(2)(ii), to read as follows:

§ 265.443 Design and operating requirements.

* * * * *

(b) * * *

(2) * * *

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

* * * * *

15. Section 265.443 is amended by revising paragraphs (m) introductory text, and (m)(1) introductory text to read as follows:

§ 265.443 Design and operating requirements.

* * * * *

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

* * * * *

16. Section 265.443(m)(3) is amended by revising the reference "(m)(3)" to read "(m)(1)(iv)".

* * * * *

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

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

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

§ 270.22 [Redesignated as § 270.26]

18. Section 270.22 added on 12–6–90 at 56 FR 50450 is redesignated as § 270.26; the heading is revised to read "Special Part B Information Requirements for Drip Pads"; in paragraph (c) of redesignated § 270.26, revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(14), revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(15), revise "§ 264.571" to read "§ 264.573"; and in paragraph (c)(16), revise "§ 264.573(a)" to read "§ 264.575(a)".

[FR Doc. 91–15340 Filed 6–28–91; 8:45 am]
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federal register

Monday
July 1, 1991

Part VIII

Environmental Protection Agency

40 CFR Parts 264, 265 et al.

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Requirements and Financial Responsibility; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-3968-1]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects certain omission errors in the financial responsibility requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). These errors were made in a rulemaking related to liability coverage that appeared in the **Federal Register** on September 1, 1988 (53 FR 33938).

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free), or (202) 382–3000 in Washington, DC, or Ed Coe, Office of Solid Waste (OS–341), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–6259.

SUPPLEMENTARY INFORMATION: In a final rule published on September 1, 1988 (53 FR 33938), EPA promulgated amendments to the financial responsibility requirements related to liability coverage at 40 CFR subpart H. Following publication of that rule, Chemical Waste Management, Inc. (CWM) filed suit against the Agency challenging several provisions. Among other matters, CWM pointed out certain omissions in the rule language that the Agency recognized to be inadvertant. The parties entered into a settlement agreement on February 23, 1990. To satisfy, in part, the terms of that agreement, this notice corrects omission errors in §§ 264.147(a)(2) and 265.147(a)(2) (a proposed rule published elsewhere in today's issue satisfies some of the remaining provisions of the settlement agreement). In addition, this notice corrects the omission in the September 1, 1988 rule of "miscellaneous units" as units subject to the requirements of § 264.147(b).

I. Sections 264.147(a)(2) and 265.147(a)(2)

The Agency inadvertently omitted a reference to the financial test as an acceptable means of providing financial assurance for liability coverage when it amended §§ 264.147(a)(2) and 265.147(a)(2) as part of the September 1, 1988 rulemaking. This notice corrects this error and inserts a reference to the financial test in those sections.

II. Miscellaneous Units—Sections 264.147(b) and 265.147(b)

Section 264.147(b) requires owners and operators of certain hazardous waste management units to demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility. A final rule published on December 10, 1987 (52 FR 46946) extended that requirement to disposal "miscellaneous" units. When the Agency again amended § 264.147(b) in the September 1, 1988 rulemaking, the December 10, 1987 change was inadvertently omitted. Today's correction restores the December 10, 1987 change, and incorporates all amendments to that paragraph to date.

List of Subjects for 40 CFR Parts 264 and 265

Hazardous waste, Insurance.

Dated: June 6, 1991.

Don R. Clay,

Assistant Administrator.

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

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

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

2. In § 264.147, paragraph (a)(2) and the first sentence of the introductory text in paragraph (b) are revised to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

* * * * *

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. * * *

* * * * *

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

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

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

§ 265.147 [Amended]

3. In section 265.147 paragraph (a)(2) is revised to read as follows:

(a) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

[FR Doc. 91–15057 Filed 6–28–91; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 280, and 761

[FRL-3861-7]

RIN 2050-AC71

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend its financial assurance requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). First, EPA is proposing to revise the financial test criteria for closure and post-closure care by amending the financial ratio requirements and to revise the financial tests for closure and post-closure care and third-party liability coverage by amending the net-worth and net-working-capital multiples. Second, EPA is proposing to amend the claims reporting provision and the provisions for obtaining a letter of credit in the recently promulgated regulations that expanded the allowable financial assurance mechanisms for liability coverage (53 FR 33938, September 1, 1988). Third, the Agency is proposing to allow a nonparent company to provide a guarantee as a demonstration of financial assurance for closure and post-closure care. Finally, today's proposal would require the owner or operator of a disposal facility to certify compliance with deed notice requirements after closure of a hazardous waste facility, before being released from closure financial assurance requirements.

Today's notice addresses in part a rulemaking petition submitted by the National Solid Wastes Management Association on February 16, 1990. A related notice elsewhere in today's issue makes technical revisions to the language of the liability coverage requirements.

DATES: Comments must be submitted on or before August 30, 1991.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS-305), 401 M St. SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F-91-RCFP-FFFFF) on the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call 382-3000), or Ed Coe at (202) 382-6259, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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I. Authority

This proposed rule is issued under the authority of section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6924.

II. National Solid Wastes Management Association Rulemaking Petition

On February 16, 1990, the National Solid Wastes Management Association submitted to the Agency a rulemaking petition related to RCRA and other EPA financial responsibility requirements. The petition requested the Agency to initiate rulemakings to: (1) Revise methods of establishing individual amounts of financial assurance; (2) revise several of the mechanisms (including the corporate financial test and the corporate guarantee) currently used to demonstrate financial responsibility requirements under RCRA subtitle C and related programs; and (3) consider centralized Federal management of financial assurance. As part of the centralized Federal management approach, NSWMA suggested changes to the methods of calculating financial assurance levels and suggested that states should not be allowed to set financial assurance requirements that deviate from the Federal.

Many of the issues raised by NSWMA in its petition were not new to the Agency. For example, at the time that the petition was submitted, the Agency was in the process of developing the revisions to the subtitle C corporate financial test that are proposed today. Though not developed in response to the petition, the Agency believes that the proposed revisions to the financial test address many of the concerns related to the financial test that were raised by NSWMA in its petition.

In its petition, NSWMA pointed out that in the September 1, 1988 rulemaking related to third party liability, the Agency had allowed the use of the corporate guarantee by firms that are not the direct parent of the facility owners or operators. NSWMA urged the Agency to extend the non-parent corporate guarantee to closure and post-closure financial assurance requirements as well. The revisions to the corporate guarantee, proposed in this notice and discussed in section V of this preamble, respond to this portion of NSWMA's petition.

III. Proposed Revisions to the Financial Test

A. Background

Section 3004 of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, requires the Environmental Protection Agency (EPA) to promulgate regulations establishing such performance standards applicable to owners and operators of facilities for the treatment, storage, or disposal of

hazardous waste as may be necessary to protect human health and the environment. Section 3004(a)(6) states that these standards shall include requirements respecting "* * * the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, * * * and *financial responsibility as may be necessary or desirable* * * *" (emphasis added). "Financial responsibility," while not defined in the original RCRA or subsequent amendments, has been defined by Congress in other legislation (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or CERCLA) as being demonstrable through a variety of mechanisms, including passing a test of corporate financial strength (hereafter, a financial test).

Pursuant to its statutory authority under RCRA, EPA proposed in 1978 a set of financial assurance regulations requiring owners or operators of TSDFs to provide demonstrations that they possess adequate resources to cover the costs of closure and post-closure care (43 FR 59006, December 18, 1978). The original financial assurance proposal included only the trust fund as a mechanism for assuring the costs of closure and post-closure care. After receiving comments contending that allowing only trust funds was financially burdensome, the Agency added several alternative mechanisms, including a financial test, in the revised proposal of May 19, 1980 (45 FR 33260). The proposed financial test provided a set of financial criteria which, if passed, allowed the owner or operator to demonstrate financial assurance without actually setting aside funds in a trust fund for closure or post-closure care or obtaining a third-party financial assurance mechanism that would guarantee an available source of funds (e.g., letter of credit or insurance). After receiving many comments on the May 19, 1980 reproposal suggesting other criteria for evaluating financial viability, the Agency conducted an extensive analysis of possible financial tests that resulted in the current financial test for closure and post-closure care that was promulgated in the interim final rule of April 7, 1982 (47 FR 15032). These requirements are in 40 CFR parts 264 and 265, subpart H, which cover permitted and interim status facilities respectively.

The Agency proposed financial assurance requirements for third-party liability coverage simultaneously with the proposal for closure and post-closure care financial assurance (43 FR 59006, December 18, 1978). In developing a financial test for liability coverage, the Agency applied the same basic analytical approach used for evaluating potential financial tests for closure and post-closure care. The Agency's financial test analysis led to the promulgation on April 16, 1982, of the current financial test in 40 CFR parts 264 and 265 subpart H for liability coverage (47 FR 16544).

Under the current regulations, which have been in effect since 1982, TSDF owners or operators can satisfy the requirements for financial assurance of closure and post-closure care by demonstrating that they meet either of the following sets of criteria:

Closure/Post Closure Care

Alternative I:

(A) Two of the following three ratios:
  (1) A ratio of total liabilities to net worth of less than 2.0;
  (2) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities of greater than 0.1; and,
  (3) A ratio of current assets to current liabilities of greater than 1.5; and
(B) Net working capital and tangible net worth each at least six times the sum of current closure and post-closure care cost estimates being covered by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates being covered by the test.

Alternative II:

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
(B) Tangible net worth at least six times the sum of current closure and post-closure care cost estimates being covered by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates being covered by the test.

Under the current regulations, owners or operators can satisfy the requirements for financial assurance for liability coverage by demonstrating that they meet either of the following sets of financial test criteria:

Alternative I:

(A) Tangible net worth of at least $10 million; and
(B) Net working capital and tangible net worth each at least six times the sum of liability coverage to be demonstrated by the test; and
(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of liability coverage to be demonstrated by the test.

Alternative II:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
(B) Tangible net worth at least six times the sum of liability coverage to be demonstrated by the test; and
(C) Tangible net worth of at least $10 million; and
(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of liability coverage to be demonstrated by the test.

B. Development of the Financial Test

1. 1981 Analysis and Results

In developing the current financial test regulations, EPA performed an extensive analysis of financial test options for demonstrating financial responsibility for the costs of closure, post-closure care, and liability coverage under RCRA subpart H. This analysis is described fully in the Background Document for the Financial Test and Municipal Revenue Test: Financial Assurance for Closure and Post-Closure Care, U.S. EPA, November 30, 1981, and is summarized below.

The methodology used by the Agency to select financial tests in 1981 consisted of the following basic steps:

(1) Establish minimum net worth requirement for firms using the financial test.
(2) Analyze the performance of various financial tests in discriminating between bankrupt and viable firms.
(3) Evaluate those tests that best discriminate between viable and bankrupt firms according to a "least cost" criterion.
(4) Impose "multiples requirements" on firms using the test for closure, post-closure care, and/or liability coverage.
(5) Establish bond rating alternative for firms with unique financial characteristics.

Each of these steps is discussed below.

a. Establish Minimum Net Worth Requirement. If a firm uses a financial test for demonstrating financial assurance, it does not have to set aside funds or purchase a financial assurance mechanism from a third party (e.g., letter of credit) to satisfy the financial assurance requirements. Thus, if a firm passes the financial test as its demonstration of financial assurance and then experiences financial duress or goes bankrupt, it is unlikely that the firm will be able to cover the required costs (e.g., the costs of closure and post-closure care) in a timely manner. To help ensure that the financial test included criteria that protected against financial duress and possibly bankruptcy, the Agency imposed a $10 million minimum net worth requirement for firms using the test. Data available to the Agency in 1981 indicated that the business failure rate for firms with less than $10 million in net worth was as much as double the failure rate for firms with more than $10 million in net worth, suggesting that the smaller firms could be more likely to declare bankruptcy and leave unfunded obligations. Moreover, the Agency was concerned that the expense of environmental obligations could drive small TSDF owners into bankruptcy if they failed to plan for these future costs. The Agency compared the size of potential closure, post-closure care, and liability obligations (which range from $100,000 to over $10 million) with net worth and determined that a $10 million minimum net worth requirement would help to ensure that the costs of conducting closure and post-closure care activities and compensation for third-party damages would not themselves be burdensome enough to cause TSDF owners to go into bankruptcy.

b. Analyze Performance of Alternative Financial Tests. The Agency was concerned that a minimum net worth requirement alone would not be sufficient to preclude firms from passing the financial test and later going bankrupt. Thus, the Agency examined over 300 alternative sets of mesures, consisting largely of different combinations of financial ratios that have long been used in the financial community to assess the financial performance of firms, for possible inclusion in a financial test (financial ratios are discussed in more detail in the next section).

To measure the performance of alternative tests in discriminating between viable and bankrupt firms, the Agency constructed a sample of 178 non-bankrupt firms and a sample of 66 bankrupt firms. The non-bankrupt firm sample consisted of firms with available financial information for the years 1973–1975 that did not declare bankruptcy in that period. Because data on the actual owners of TSDFs were not readily available to the Agency in 1981, the sample of firms used as a proxy for actual owners was drawn from industries identified through Moody's Industrial Manual as likely to generate, treat, store, or dispose of hazardous waste on-site. The bankrupt firm sample consisted of firms that had filed for bankruptcy under chapters 10 or 11 of the Federal Bankruptcy Act between 1966 and 1979 and had available financial information for the three years prior to bankruptcy. These firms were selected from a broader range of industrial categories than the non-bankrupt firms and included categories unlikely to manage hazardous waste. This broader range of categories was necessary to ensure an adequate sample size, since bankruptcy is a relatively rare event.

The candidate financial tests were then evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to (1) "pass" non-bankrupt firms capable of meeting their financial assurance obligations, and at the same time (2) "fail" bankrupt firms that would enter bankruptcy without the means to meet those obligations. The Agency quantified these performance indicators using the following two measures:

Availability (A): Availability of the financial test was measured as the percentage of non-bankrupt firms with over $10 million in net worth that can pass the test.

Bankruptcy Misprediction (M): Misprediction of the test was measured as the percentage of bankrupt firms that pass the financial test within three years before bankruptcy. The Agency assumed that even if a firm failed the financial test up to three years prior to bankruptcy, there may not be sufficient time or capability for the owner or operator to obtain alternate assurance prior to bankruptcy.

The optimal tests would maximize the number of viable firms that pass the test—i.e., maximize "availability" of the test, or the "A" measure—and minimize the number of bankrupt firms that pass the test—i.e., minimize the number of firms that are "mispredicted," the "M" measure. As documented in the 1981 analysis, there is a trade-off between these two performance measures. No financial test will allow every viable firm to pass the test while at the same time screening out all future bankrupt firms from using the test prior to bankruptcy. More difficult tests will, in general, prevent more future bankrupt firms from being able to pass the test, but will be more difficult for viable firms to pass (i.e., more difficult tests will be less "available" to viable firms). By contrast, less difficult tests have the advantage of being widely available to healthy firms but also tend to allow more bankrupt firms to pass.

After measuring the performance of all candidate tests in terms of their ability to discriminate between bankrupt and nonbankrupt firms, the Agency selected for further analysis a group of "dominant" tests. Dominant tests were those that passed the largest number of non-bankrupt firms for given levels of misprediction rates. If one test passed more non-bankrupt firms than another test but screened out the same number of bankrupt firms, the first test was considered to "dominate" the second test and was used in the Agency's group of "best tests."

c. Evaluate "Best" Tests According to a Least-Cost Criterion. Because any financial test involves a tradeoff between availability to viable firms and screening of firms that later go bankrupt, the choice of an optimal test depends on the Agency's objectives in allowing a test, and requires the Agency to select criteria for determining which "mix" of performance is best. In 1981, the Agency used a "least-cost" criterion for selecting the optimal financial test. That is, EPA calculated the costs to the public and to the regulated community associated with each test that had been identified previously as a "best test" and selected the test with the lowest total costs. For each financial test evaluated, the Agency calculated (1) the costs of the public sector ("public costs") of paying for necessary response actions for firms that pass the test but later go bankrupt without setting aside firms for closure and post-closure care and, if necessary, third-party liability judgments through other financial assurance mechanisms, and (2) the costs to viable firms ("private costs") of obtaining alternative financial assurance mechanisms (e.g., letters of credit or trust funds) when they cannot pass the test. Because the financial test is virtually a costless means of demonstrating financial responsibility, the more available the test the lower the cost of the regulated community. Widely available tests have relatively low private costs because relatively few viable firms are forced to pay for other financial assurance mechanisms (e.g., letters of credit or trust funds). Conversely, the more available the test, the more likely the test is to allow bankrupt firms to pass the test. As a result, highly available tests have the result of higher public costs because more firms go bankrupt

without setting aside funds for closure and post-closure care and, if applicable, third-party liability judgments. Tests with better ability to screen bankrupt firms have relatively low public costs because relatively few bankrupt firms have leave unfunded environmental obligations by using the financial test and later going bankrupt. The Agency selected the test with the lowest sum of both public and private costs.

The lowest-cost financial test that the Agency analyzed in 1981 for closure and post-closure care specified three financial ratios and required that firms pass two of these three ratios.

This test was projected to allow about 96 percent of viable firms to pass, while screening out about half of firms that later go bankrupt within three years of passing the test. This balance of availability to viable firms and screening out of bankrupt firms resulted in the lowest combined costs to the public and private sectors of any other test that included a $10 million in net worth requirement.

The Agency also analyzed alternative financial tests for liability coverage by measuring the public and private costs of potential tests. The results of this analysis differed from the results of the cost analysis for alternative tests for closure and post-closure care, however, because the public costs of third-party liability coverage are different from the public and private costs of closure and post-closure care. Unlike the public costs related to closure and post-closure care, which are incurred every time a firm using the financial test goes bankrupt without providing alternate assurance, public costs related to liability coverage are incurred only when a firm using the financial test enters bankruptcy and is required to pay liability claims. Because the probability of bankruptcy is low, and the probability of a firm having to pay liability claims is low, the combined probability of both events occurring is very low. Therefore, the public costs of a financial test for liability coverage are significantly lower than public costs of the closure and post-closure care test even when the ability of a test to screen out bankrupt firms is relatively weak. As a result, the test that minimized the total costs (i.e, the sum of public and private costs) did not include any ratio requirements. An easier test without ratio requirements reduced private costs because of its greater availability to viable firms without significantly increasing public costs (because few bankrupt firms able to pass the test are likely to face a liability obligation).

d. Impose Multiples Requirements. In 1981 the Agency included in all tests a requirement that firms have tangible net worth and net working capital equal to at least six times the amount of the financial assurance obligations covered by the test. These "six times" or "multiples" requirements were imposed to provide a cushion of financial resources for firms that might experience rapid financial deterioration after passing other components of the financial test. Agency data had indicated that some firms in the sample of bankrupt firms were able to pass most of the ratio tests analyzed and yet deteriorated quickly into bankruptcy. The Agency performed an analysis of those firms and concluded that the six times multiples would provide an adequate cushion to ensure that even rapidly deteriorating firms would have resources adequate to cover the costs of closure, post-closure care, and third-party liability judgments.

e. Establish Bond Rating Alternative. The analysis summarized above resulted in the selection of financial tests for closure and post-closure care and for liability coverage. Both of these tests included net working capital requirements: For closure and post-closure care, the test required a net working capital multiple of six times the closure/post-closure cost estimate and a current ratio of greater than 1.5; for liability coverage, the test required a net working capital multiple of six times the required liability coverage. In the course of its analysis, the Agency found that the net working capital multiple requirements would make the subtitle C financial test unavailable to many electric utilities, despite their overall financial strength, because many utilities typically operate with negative net working capital. Thus, the Agency considered allowing firms to pass an investment grade bond rating requirement as an alternative to the tests selected for closure/post-closure care and for liability coverage.

An investment grade bond rating was believed to be a good demonstration of financial strength because it reflected the expert opinion of the bond rating service and the financial community. Electric utilities, and any other firms with similar financial characteristics, could pass such a requirement without having to have positive net working capital. Moreover, the Agency performed a quantitative analysis indicating that bond ratings have historically been a reasonably good indicator for predicting default, and noted that none of the firms in its sample of bankrupt firms between 1966 and 1979 had an investment grade rated bond issuance. After analyzing the performance of bond ratings in predicting default, the Agency decided that allowing the bond rating alternative test would enhance the availability of the financial test to financially sound firms in industries with unusual financial characteristics, such as the electric utility industry, while ensuring that firms passing the requirement have sufficient financial strength to fund the potential costs of closure, post-closure care and third-party liability actions.

2. Rationale for Revising Current Financial Tests

The Agency decided to reevaluate alternative financial tests and revise the current provisions for the subtitle C financial tests for a number of reasons. First, the current tests have come under criticism from both the private and public sectors for not performing as the Agency had expected. Second, the Agency recognized that while the original analysis of alternative tests was analytically rigorous and used the best available information, it was based on very limited data on the universe of firms owning TSDFs as well as limited data on the average costs of closure, post-closure care, and third-party liability. The Agency has since compiled additional data in these areas. Finally, the Agency's analysis confirmed that the current financial tests are not performing as well as the Agency originally estimated in terms of their availability to viable firms, while the tests were not performing any better than estimated in screening out bankrupt firms.

a. Criticisms of the Existing Tests. Since the financial tests were promulgated, parties in both the private and public sectors have criticized the current financial test for closure and post-closure care and the financial test for liability coverage. The two key criticisms are: (1) The financial test is not as accurate a predictor of firm bankruptcy as estimated in the 1981 analysis, and (2) the financial test is not available to some large, financially strong firms.

The General Accounting Office criticized the bankruptcy prediction accuracy of the financial test in a February 1986 report.[1] The report states that the 1981 estimate of the percentage of firms that would pass the test but later go bankrupt without providing financial assurance was understated, and that the financial test may therefore be an inadequate mechanism for providing adequate financial assurance.

[1] Environmental Safeguards Jeopardized When Facilities Cease Operating, U.S. General Accounting Office, February, 1986.

On the other hand, criticism from the private sector has focused on the unavailability of the tests to large, financially sound firms. For example, commenters on the proposed financial responsibility rule for subtitle D municipal solid waste landfills, which encouraged States to adopt the Subtitle C financial test and other financial assurance mechanisms in developing State regulations (53 FR 33314, August 30, 1988), stated that the test is unavailable to many strong firms and thus unnecessarily raises the cost of providing financial assurance by requiring alternate assurance mechanisms to be obtained.

b. *Limitations of the 1981 Analysis.* The comments and criticisms regarding the financial tests substantiate Agency concerns that the 1981 analysis leading to the selection of the tests was limited in two important respects: (1) Samples of firms used, and (2) limited information on the potential costs of closure, post-closure care, and liability coverage. Each of these limitations is discussed below.

Samples of Firms Used. At the time of the original analysis, the owners and operators of TSDFs had not been fully identified. Therefore, the samples of firms used in the 1981 analysis, while drawn from the best available sources at the time, were not necessarily representative of the types of firms that own TSDFs. The Agency's sample of non-bankrupt firms was drawn from general industrial categories that included on-site handlers of hazardous waste; the bankrupt firm samples was drawn from a even broader base of industrial categories. As a result, in both samples, the firms considered by the Agency were not known TSDF owners or operators.

Limited Information on Potential Financial Assurance Costs. At the time of the Agency's original financial test analysis, little information was available on the numbers and types of facilities owned and on the costs of closure and post-closure care. These limitations had several significant effects on the evaluation of alternative financial test.

First, the lack of data on the costs of closure and post-closure care made it very difficult for the Agency to analyze the impact of the multiples requirements on the performance of financial tests for closure and post-closure care in terms of availability to viable firms and ability to screen out bankrupt firms. Estimates of closure and post-closure care costs are necessary to calculate the amount of tangible net worth and net working capital a firm must have to satisfy the required six times multiples. In the absence of this information, the Agency was unable to incorporate the multiples requirements into the calculation of availability and bankruptcy misprediction for alternative financial tests, and imposed the requirements separately as a protection against premature closure and post-closure obligations themselves causing bankruptcy.

Second, the lack of data on the types of facilities owned by each firm limited the Agency's ability to test the impact of the multiples requirements on the performance of alternative financial tests for liability coverage. In the case of liability coverage, information on whether a firm owns land disposal or non-land disposal facilities is necessary to determine the required "six times" multiple for net worth and net working capital. A firm owning at least one land disposal facility must have six times the required $8 million aggregate coverage (i.e., $48 million) in net working capital and net worth, while a firm owning facilities with only container storage, tank, incinerator, or waste pile units must have six times the required $2 million in aggregate coverage (i.e., $12 million) in net worth and net working capital. In the absence of information on types of facilities, the Agency was unable to incorporate the multiples requirements into the calculation of availability and bankruptcy misprediction for alternative financial tests, and imposed the requirements separately as a protection against third party liability judgments themselves causing bankruptcy.

The effect of not including the multiples requirements in the analysis of the performance of alternative financial tests is that the current financial tests are more difficult to pass than the Agency predicted. In the case of the closure/post-closure test, the actual test includes the six times multiples requirements for net worth and net working capital in addition to the $10 million in net worth requirement and the two of three ratios requirement analyzed quantitatively by the Agency. Therefore, a firm that had sufficient net worth to pass the $10 million in net worth criterion required by the test in the 1981 analysis might fail the actual test which required additional net worth as well as net working capital to satisfy the multiples requirements. Because the current test (including the multiples requirements) is more difficult than the test originally analyzed (which did not include the multiples requirements), it is highly likely that fewer non-bankrupt firms are actually able to pass the test than the Agency anticipated. In addition, it follows that fewer bankrupt firms should be able to pass the test than the Agency anticipated.

Similarly, in the case of the financial test for liability coverage, the actual test includes the six times multiples requirements for net worth and net working capital in addition to the $10 million in net worth requirement. A firm that had sufficient net worth to pass the $10 million in net worth criterion required by the test in the 1981 analysis might fail the actual test which required additional net worth as well as net working capital to satisfy the multiples requirements. Again, because the current test is more difficult than the test originally analyzed (because the current test includes multiples requirements), it is highly likely that fewer viable firms are actually able to pass the test than the Agency anticipated. In addition, it is likely that fewer bankrupt firms should be able to pass the test than the Agency anticipated.

In the years since the original financial test analysis was completed, the Agency has compiled a data base containing financial and facility information for owners and operators of regulated TSDFs. This data base provides ownership and financial information for TSDFs, including the types of units present at each facility (the data base is described in more detail in the next section). The Agency has also developed more refined estimates of the cost of closure and post-closure care for each facility, based on the types of units present at each facility. These data enabled the Agency to test explicitly the impact of the current multiples requirements in the financial tests, as well as alternative requirements, in an evaluation of alternative financial tests.

c. *Preliminary Analysis of Current Test Performance.* As a preliminary step to the reevaluation of financial tests, the Agency analyzed the financial test for closure and post-closure care and the financial test for liability coverage, to compare the actual performance of the tests relative to the Agency's estimates in 1981. In this analysis, the current financial tests were analyzed using the same performance measures as in the 1981 analysis, but against new samples of bankrupt and non-bankrupt firms developed by the Agency (the new samples are explained in more detail in the next section). The results of this analysis showed that the current financial test for closure and post-closure care was not performing as well for firms with TSFDs as the Agency had predicted in the 1981 analysis of firms in various industrial categories. The test was available to about two-thirds of

viable firms with greater than $10 million in net worth, compared to the Agency's original estimate of 96 percent availability. The test was slightly better (less than ten percent) at screening out bankrupt firms than the Agency originally estimated. The results of this analysis showed that the financial test for liability coverage also was not performing as well as indicated by previous Agency estimates. The test was only available to 62 percent of viable firms compared to the Agency's 1981 estimate of 100 percent availability. In contrast, the test actually screened 25 percent more bankrupt firms than the Agency anticipated due to the difficulty of passing the multiples requirements of the test. Because the results of this analysis were so different from the original estimates, the Agency decided to reevaluate alternative financial tests.

3. 1989 Analysis Methodology

Today's proposed revisions to the financial test for closure and post-closure care and for liability coverage are a result of an analysis of the existing financial tests and numerous regulatory alternatives to these tests. In this analysis, the Agency used the same basic goals in promulgating a financial test as those used in the 1981 analysis: (1) Funds should be available to pay for the cost of environmental obligations in a timely manner to ensure the protection of human health and the environment; (2) as a matter of equity, the parties responsible for environmental obligations (i.e., owners and operators) should pay for those costs; (3) total costs of providing assurance should be minimized; and (4) cost to the regulated community of providing financial assurance should be as low as possible, while satisfying other goals. The analysis of alternative tests was significantly enhanced by the availability of better data and other enhancements.

The analysis of financial tests alternatives for this proposal follows closely the approach used by the Agency in the 1981 analysis. First, a minimum net worth requirement was established. Second, the Agency analyzed the performance of various financial tests in discriminating between bankrupt and viable firms. Third, those tests that best discriminated between viable and bankrupt firms were evaluated according to a "least cost" criterion, and a new revised financial test was selected. Each of these analytical steps is described immediately below, while the conclusions reached as a result of this analysis are set forth in section III. C. of this preamble.

a. *Establish Minimum Net Worth Requirement.* The Agency reviewed data on firm failure rates by size of net worth to determine if a minimum net worth requirement significantly reduces the likelihood of bankruptcy among firms using the financial test. Because the 1981 analysis used information on firm failure rates largely from the early 1970's, EPA obtained updated information from Dun and Bradstreet (D&B) and U.S. Census data for the years 1983–1987 to derive average annual failure rates for manufacturing firms (which represent nearly all RCRA firms) by various net worth categories. Using the derived firm failure rates by net worth category, EPA analyzed the effect of various net worth thresholds on the probability that firms passing the financial test would later go bankrupt without providing alternate assurance.

b. *Evaluate the Performance of Alternative Financial Tests.* The Agency followed the same basic approach for evaluating alternative tests as in the 1981 analysis. First, the Agency evaluated available financial measures and then selected a number of individual financial measures for inclusion into a set of alternative financial tests. This set of measures consisted of measures commonly used by financial analysis and financial institutions in gauging the financial strength of a firm. Second, the set of alternative tests was analyzed for their availability to viable firms and ability to screen out bankrupt firms, and the "best" performing tests were identified. "Best" performing tests, or "dominant" tests, were defined as those that were the most available to viable firms for a given level of bankruptcy screening. Third, these "best" performing tests were analyzed for their total public and private costs, a key element in the selection of alternative tests. Public costs were defined as the costs to the public of paying for the unfunded obligations of firms that passed the financial test and later went bankrupt, and private costs were defined as the costs to viable firms unable to use the test of paying for alternative financial assurance mechanisms. Each of these steps is discussed below.

Analysis of Individual Financial Measures. A research of financial literature was conducted to identify possible financial ratios, which generally fell into one of three categories of financial ratios typically used for bankruptcy prediction:

(1) Profitability ratios—measure a firm's net income or cash flow in relation to firm size (e.g., cash flow/total liabilities), and reflect the ability of a firm to use its assets profitably and sustain operations over time;

(2) Leverage ratios—measure a firm's debt in relation to firm size (e.g., total liabilities/net worth), and measure the degree of difficulty a firm might face in meeting principal and interest repayments over time (and the willingness of lenders to extend additional credit to the firm); and

(3) Liquidity ratios—measure a firm's cash or current assets in relation to firm size or current liabilities (e.g., current assets/current liabilities), and reflect the degree to which a firm can meet its short-term obligations with readily available liquid assets.

In addition to financial ratios, the Agency also evaluated a variety of multiples requirements for net worth and net working capital (i.e., one through six times the size of the financial obligation). The Agency also analyzed "additive" requirements that required firms to have a certain level of net worth (in addition to the minimum net worth requirement of $10 million) based on the amount of costs they wished to cover with the test. Under this approach, for example, if a test required a six times additive for net worth, a firm would have to have a minimum of $10 million in net worth plus an additional amount of net worth equal to six times the financial assurance obligations covered by the test. (In contrast, the current tests allow net worth to be applied both to the minimum net worth requirement and to the net worth multiple requirement). Requiring a net worth additive over and above the $10 million net worth requirement ensures that a firm using the financial test will maintain a $10 million minimum net worth even after paying the cost of environmental obligations covered by the test. Thus, this provision protects against the risk of environmental obligations causing bankruptcy for firms that use the financial test.

To measure the performance of these individual financial measures in discriminating between viable and bankrupt firms, the Agency used the new samples of bankrupt and non-bankrupt firms described in the previous section. These samples incorporate data on actual owners of TSDFs compiled by the Agency in recent years. A sample of 608 non-bankrupt firms was created from the Agency's firm/facility/financial data base (F3DB) of known RCRA TSDF owners who had not gone bankrupt while they owned a facility. A sample of 31 firms that had gone bankrupt while owning a facility was developed from the F3DB and supplemented by a data base of owners of facilities included on

CERCLIS. By creating new samples of bankrupt and non-bankrupt firms from owners or operators of hazardous waste facilities, the Agency could evaluate how the individual financial measures and financial tests combining those measures actually perform against firms affected by the regulations.

The candidate financial measures were evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to (1) "pass" non-bankrupt firms capable of meeting their financial assurance obligations, and at the same time (2) fail bankrupt firms that would enter bankruptcy without the means to meet those obligations. Each financial measure was evaluated using two performance measures:

Availability (A): Measured as the percentage of total financial assurance obligations (i.e., costs of closure, post-closure care, and third-party liability coverage) facing non-bankrupt firms with over $10 million in net worth that can be covered using a particular financial measure or financial test.

Misprediction (M): Measured as the percentage of total financial assurance obligation facing bankrupt firms that can be covered by bankrupt firms using the financial test.

In the 1981 analysis, availability was measured as the percentage of non-bankrupt firms able to use the financial test to cover all of their financial assurance obligations, and misprediction was measured as the percentage of bankrupt firms able to use the financial test to cover all of their obligations. In the 1989 analysis, availability is measured as the percentage of financial assurance obligations (i.e., the percentage of closure/post-closure care obligations or required liability coverage) covered by non-bankrupt firms using the test, and misprediction measured as the percentage of obligations covered by bankrupt firms using the test. These "dollar-based" percentage measurements are used because they produce a more accurate calculation of public and private costs, as discussed in the next section.

Those individual financial measures that performed relatively well at differentiating between the two samples had a high differential between the availability (A) and misprediction (M) measures; i.e., they allow viable firms to cover a relatively large percentage of obligations and, at the same time, screen out a large share of obligations of bankrupt firms. Those measures that performed relatively poorly had about the same availability to viable firms and bankrupt firms; i.e., they allowed bankrupt and non-bankrupt firms to cover a similar percentage of obligations. In some cases, poorly-performing measures had a negative differential—they allowed bankrupt firms to cover a higher percentage of obligations than non-bankrupt firms.

The Agency's analysis of ratio measures found that profitability ratios (e.g., cash flow/total liabilities) and leverage ratios (i.e., total liabilities/net worth) were particularly good at discriminating between bankrupt and non-bankrupt firms. For financial tests based on a single profitability ratio or a single leverage ratio, the difference between the percentage of environmental obligations covered by non-bankrupt firms (defined as "A," or availability), and the percentage covered by bankrupt firms (defined as "M," or misprediction), was about 30 percent. A large number of the "dominant" financial tests identified in the next step of the analysis consisted of a combination of one profitability ratio and one leverage ratio. All of the most cost-effective financial test alternatives identified in the last step of the analysis required firms to pass either a profitability ratio or a leverage ratio (the required thresholds for each ratio were different for different tests).

In contrast to the results for the profitability and the leverage ratios, the liquidity ratios (i.e., current assets/current liabilities and net working capital/total assets) were particularly poor discriminators between bankrupt and non-bankrupt firms. In some cases, financial tests consisting of a single liquidity ratio allowed bankrupt firms to cover a larger percentage of environmental obligations than non-bankrupt firms. This result may reflect the fact that firms will often liquidate assets to meet their pressing cash obligations in the years just prior to entering bankruptcy or may reflect attempts to reschedule short-term obligations over longer periods. An anaylsis of the bankrupt firm sample showed that liquidity measures in general rose over the three-year period prior to bankruptcy. Therefore, liquidity ratios were not included in alternative financial test configurations.

The Agency's analysis of multiples and additive requirements showed that the multiples for net worth and net working capital and the net worth additive requirement did not discriminate very well between bankrupt and non-bankrupt firms (i.e., there was little difference in the percentage of obligations covered by viable and bankrupt firms passing the requirement). However, these requirements are not intended to be bankruptcy predictors but rather are designed to ensure that a large environmental obligation will not itself cause bankruptcy. Therefore, each of the potential multiples and additive requirements initially analyzed were incorporated into the alternative financial test configurations.

The various profitability and leverage ratios that performed well at distinguishing between bankrupt and non-bankrupt firms combined to form alternative financial tests. In addition, a variety of possible multiple and additive requirements for net worth were also added to each combination of financial ratios. This process led to the development of over 500 alternative financial tests to be evaluated against the samples of bankrupt and non-bankrupt firms.

Analysis of Alternative Financial Tests. The set of candidate financial tests, similar to the set of individual financial measures, were evaluated against the bankrupt and non-bankrupt firm samples in terms of their ability to pass non-bankrupt firms capable of meeting their financial assurance obligations (availability or "A") and their ability to screen out bankrupt firms that would enter bankruptcy without the means to meet those obligations (misprediction or "M"). In general the alternative tests, which were combinations of the individual measures previously analyzed, performed better at discriminating between bankrupt and viable firms that the individual measures alone. Thus, the Agency focused on these combination tests for further analysis.

Establish Set of "Best" Tests. As discussed earlier, there is a fundamental trade-off between the availability and misprediction performance measures. No test allows every viable firm to pass the test and at the same time screens out all future bankrupt firms from using the test prior to bankruptcy. As in 1981, the Agency narrowed the set of potential tests by selecting a group of "dominant" tests, i.e., tests with the highest ability to pass non-bankrupt firms for given levels of bankruptcy misprediction. A separate group of dominant tests was selected for both closure/post-closure care and for liability coverage.

c. *Evaluate Test Based on a Least-Cost Criterion.* As in the 1981 analysis, the Agency calculated the public and private costs of each "dominant" test selected in the previous step. Consistent with earlier analyses, the Agency defined public costs as the costs to the public sector of paying for financial assurance obligations for firms that pass the test but later go bankrupt without funding their obligations, and private

costs as the cost to viable firms of obtaining alternative financial assurance mechanisms when they cannot pass the test. The amount of public and private costs associated with a particular test depends on the test's performance in terms of its availability to viable firms and its ability to screen out bankrupt firms. The higher the availability of a test to viable firms, the lower the private costs because fewer firms must pay the costs of obtaining alternate financial assurance. Conversely, the better the test is at screening out bankrupt firms from using the test, the lower the public costs because fewer firms will leave unfunded obligations after bankruptcy.

The Agency calculated these costs for each candidate test and selected the lowest-cost tests that best satisfied Agency policy considerations for further analysis. In contrast to the 1981 analysis, in which the lowest-total-cost test was selected for promulgation, the Agency chose in the 1989 analysis to identify a set of low-cost tests and select a test from that group based on policy considerations. This approach was used because several tests had very similar total costs but different balances between public and private costs. Using this modified cost-effectiveness approach, the Agency could consider the balance of public and private costs among tests of approximately equal total costs. The Agency solicits comment on this approach.

While the methodology used to calculate public and private costs was consistent with the 1981 analysis, the Agency had significantly better data available for the current analysis. For example, more recent data on firm failure rates were used to estimate the likelihood that a firm passing the financial test would later go bankrupt and leave unfunded obligations (i.e., public costs). The Agency has also compiled better data on the costs of other financial assurance mechanisms which are the basis for estimating the costs to firms of obtaining alternate assurance if they are unable to pass the financial test (i.e., private costs).

The calculation of costs was also enhanced by basing the A and M performance measures on the percentage of obligations (i.e., the percentage of closure/post-closure costs or required liability coverage) covered by a financial test rather than the percentage of firms able to pass the financial test for their total financial assurance obligations. Because the Agency had better data available on the costs of closure and post-closure care and had specific information on facility ownership, it could compare the total amount of financial responsibility required for each firm with that firm's capacity to pass a financial test for that specified amount. If the firm could not pass the test for the entire amount, then the Agency calculated the percentage of the financial assurance requirements that could be covered using the test. In contrast, because of the lack of data on costs and facility ownership, the 1981 analysis assumed that all firms faced similar costs and either covered all or none of their obligations with the financial test.

Calculating costs covered by a financial test as a percent of total financial responsibility required improves the calculation of total costs for two major reasons: (1) The approach accounts for the differences among firms in terms of their impact on total public and private costs; and (2) the approach accounts for the combinations of financial assurance mechanisms that firms are allowed to use in providing coverage of obligations.

First, if a viable firm is unable to pass the financial test, the annual cost of obtaining an alternate financial assurance mechanism is equal to a percentage of the amount of financial assurance obligations covered by the mechanism. For example, the annual cost of a letter of credit may equal 1.5 percent of the closure cost estimate for which assurance is provided. If the firm faces substantial financial assurance obligations (e.g., it owns several disposal facilities with high closure and post-closure costs) and cannot pass the financial test, then private costs are increased by a much greater amount than if a viable firm with only limited obligations (e.g., a firm with one small facility) cannot pass the test. Similarly, if a firm facing substantial financial assurance obligations goes bankrupt after using the financial test, the public costs will be much greater than if a firm with minimal obligations goes bankrupt. By counting availability and misprediction in terms of the percentage of obligations facing firms that can be covered using the financial test, the relative impact of a viable firm's inability to pass the test (which results in private costs) or of a bankrupt firm's ability to pass the test (which results in public costs) is incorporated into the cost analysis. Second, a dollar-based measure of availability and misprediction also allowed the Agency's analysis to reflect the fact that financial assurance regulations allow firms to combine the financial test with other financial assurance mechanisms. In the case of closure and post-closure care, the regulations allow firms to use the financial test to cover the obligations of some facilities, and use other mechanisms to cover the obligations of other facilities. In the case of liability coverage, regulations explicitly allow firms to use the financial test to cover as much of their liability requirements as possible, and use other mechanisms to cover the remainder of their liability requirements. Because the financial test can be combined with other mechanisms in many cases, and because the financial test is likely to be at least-cost financial assurance mechanism, the Agency assumed that all firms will use the financial test to cover as much of their financial assurance obligations as possible and then cover remaining obligations with other mechanisms. For example, if a firm can satisfy the financial test requirements sufficiently to cover 70 percent of its closure, post-closure care and liability coverage obligations, then the Agency assumed that the firm would obtain alternate financial assurance mechanisms to cover the remaining 30 percent of its obligations.

C. Section-by-Section Analysis of Proposed Financial Test Revisions

1. Summary of Proposed Revisions

The Agency is proposing regulatory language that would allow an owner or operator to satisfy the financial assurance requirements for closure and post-closure care by meeting either of the following sets of criteria:

Alternative I

(A) One of the following two ratios:

(1) a ratio of total liabilities to net worth less than 1.5; or

(2) a ratio of cash flow (net income plus depreciation, depletion, and amortization) minus $10 million to total liabilities greater than 0.1; and

(B) Tangible net worth of at least $10 million plus the sum of all financial assurance obligations covered by the financial test (i.e., $10 million plus current closure and post-closure care cost estimates covered by the test); and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates.

Alternative II

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-

closure cost estimates and any other obligation covered by the financial test plus $10 million; and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure care cost estimates and any other obligations covered by the financial test.

The Agency is also proposing regulatory language that would allow an owner or operator to satisfy the financial assurance requirements for liability coverage by demonstrating that he meets the following criteria:

Alternative I

(A) Tangible net worth of at least $10 million plus the sum of liability coverage requirements; and

(B) Assets in the United States amounting to at least 90 percent of total assets or at least six times the amount of aggregate liability coverage to be demonstrated.

Alternative II

(A) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million plus the sum of liability coverage requirements; and

(C) Assets in the United States amounting to at least 90 percent of total assets or at least six times the amount of aggregate liability coverage to be demonstrated.

It should be noted that both proposed revised tests retain the requirement that the owner or operator have assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates. This provision serves to ensure that assets are available within the United States in the event that either the United States or a State seeks assets to such assets to carry out the assured task. Because this requirement serves a purpose other than prediction of financial condition, the Agency is not revising this provision as part of its amendments to the financial tests.

2. Financial Test for Closure and Post-Closure Care

The financial test for closure and post-closure care comprises a minimum net worth requirement and a set of financial ratios. These are discussed below.

Minimum Net Worth Requirements. The current financial test requires firms to have over $10 million in tangible net worth. This cutoff was established because data available to the Agency in 1981 indicated that firms with less than $10 million in net worth were more likely to go bankrupt than were firms with more than $10 million in net worth. Moreover, it was assumed that a $10 million minimum net worth requirement would help to ensure that the costs of closure, post-closure care, and liability judgments would not themselves cause TSDF owners to go into bankruptcy. In addition to the ordinary business misfortunes that lead to bankruptcy, the expense of meeting the costs of closure, post-closure care, and third party liabilities could drive small TSDF owners into bankruptcy if they fail to plan for these obligations.

The Agency reevaluated the validity of this assumption and is proposing to retain the $10 million minimum net worth requirement. The Agency continues to believe that the failure rate for TSDF owners with less than $10 million in net worth could be substantially higher than for larger firms. An analysis of a sample of RCRA bankrupt firms showed that firms with less than $10 million in net worth failed four times more frequently than firms with greater than $10 million in net worth. The Agency also is concerned to ensure that the costs of closure and post-closure care and liability judgments, which could result in costs of millions of dollars, do not themselves cause smaller firms to go bankrupt. In order to avoid the potential for increased public costs due to smaller firms going bankrupt and leaving unfunded environmental obligations, the Agency is proposing to limit eligibility for the financial test to firms with greater than $10 million in net worth.

The Agency does not believe that making the test available to firms with less than $10 million in net worth would significantly reduce the costs of financial responsibility to the regulated community. Although allowing firms with less than $10 million in net worth to use the test would reduce the private costs of obtaining alternate mechanisms, the Agency believes that these savings would be largely offset by the costs of audits required to use the financial test. The reporting requirements of the financial test require that firms have audited financial statements. Most TSDF owners with less than $10 million are privately-held firms that are not required by the SEC to have audited statements. The Agency estimates that the costs of obtaining audits would represent over 50 percent of the savings to firms with less than $10 million in net worth of using the financial test.

The Agency considered raising the minimum net worth requirement to $20 million in net worth because data on average failure rates for all manufacturing firms suggested that firms with less than $20 million in net worth had a significantly higher failure rate than those with greater than $20 million. The Agency, however, rejected this option. The Agency analyzed the public and private costs associated with a $20 million in net worth requirement and concluded that the savings in public costs of such a requirement (i.e., the savings due to a reduction in the number of firms using the test that later would go bankrupt) would not offset the additional costs to the regulated community (i.e., the private costs) of obtaining alternative financial assurance mechanisms.

Ratios and Multiple/Additive Requirements. As discussed in section III, the best financial ratios (i.e., those that discriminated relatively well between viable and bankrupt firms) were combined with a series of possible multiple and additive requirements for net worth and net working capital to form over 500 alternative tests for further analysis. These tests were then evaluated against the samples of viable and bankrupt firms in terms of availability (A) and misprediction (M) (as defined above). Those tests that proved "dominant," or better performing than other tests, were further evaluated in terms of their public and private costs. The best tests according to the cost evaluation were then selected for today's proposal.

EXHIBIT 1.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR CLOSURE AND POST-CLOSURE CARE

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
C/PC–94	Net Worth of at least $10 Million Pass Either of Two Ratios: —Cashflow – (0.66 X FR) / Total Liabilities > 0.05 or	$2,868	$15,408	$18,277

EXHIBIT 1.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR CLOSURE AND POST-CLOSURE CARE—Continued

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
	—Total Liabilities / Net Worth < 2.5 Net Worth at least 1 X Closure and Post-Closure Care Cost Estimate			
C/PC-902	Net Worth of at least $10 Million Plus Net Worth in the amount of Closure and Post-Closure Care Cost Estimate. Pass Either of Two Ratios: —Cashflow − $10 Million / Total Liabilities > 0.10 or —Total Liabilities / Net Worth < 1.5	12,075	6,898	18,972
Current Test	Net Worth of at least $10 Million Pass Two of Three Ratios: —Cashflow / Total Liabilities > 0.10 —Total Liabilities / Net Worth < 2.0 —Current Assets / Current Liabilities > 1.5 Both Net Worth and Net Working Capital at least 6 X Closure and Post-Closure Care Cost Estimate	21,828	9,752	31,580

Exhibit 1 presents total public and private costs of the top two tests for closure and post-closure care in comparison to the current test. These tests each have a cash flow ratio, a total liabilities to net worth ratio, and a $10 million in net worth requirement. In addition, Test 94 has a net worth multiple requirement of one (i.e., a firm must have net worth of one times the closure/post-closure cost estimate), and Test 902 has a net worth additive requirement of one (i.e., a firm must have net worth at least equal to the closure/post-closure cost estimate in addition to $10 million in net worth). The Agency believes that there are advantages to both Test 94 and Test 902.

Test 94 was the lowest-cost test analyzed. However, the test includes a tax rate adjustment in the cash flow ratio which may change over time, thus making it a more difficult test to implement and verify. (The estimate shown in Exhibit 1 is that all firms are subject to a 34 percent corporate tax rate). In addition, the Agency is concerned that a test with a net worth multiple of one does not provide sufficient assurance that a firm will have adequate funds to cover closure and post-closure care activities when they are required. Allowing a firm to use the financial test to cover obligations equal to the net worth of the firm could result in the firm going bankrupt if it were forced to pay for the costs of closure and post-closure care earlier than expected. Because the results of the Agency's analysis do not account for these unforseen bankruptcies, the estimates of public costs in Exhibit 1 may be underestimated.

Test 902 was the second most cost-effective test, with private costs of $12.1 million and public costs of $6.9 million for a total cost of about $19 million. Test 902 also has substantially lower total costs than the current test, which has costs of over $31 million.

The Agency prefers Test 902 for several reasons. First, the test requires a cash flow ratio adjusted by $10 million rather than by a tax adjusted cost estimate, which will be much easier to verify. Second, the test includes a net worth additive requirement of one instead of the multiple requirement of one used in Test 94. The net worth additive requirement would ensure that a firm has net worth sufficient to cover its financial assurance obligations and has an additional $10 million in net worth to cover other debts and obligations as necessary.

Third, Test 902 has a different balance of public and private costs than Test 94. Because it is less available to firms, it has higher private costs than Test 94. However, the substantial improvement in bankruptcy screening (lower misprediction, or "M") leads to far lower public costs than Test 94, so that the total costs are close to the total costs of Test 94. The Agency has developed proposed language that reflects this balance of public and private costs because it believes that public costs may be understated by the calculations shown. The calculations assume that public costs for closure and post-closure care activities for a given facility will equal the estimated private cost for these activities. In the time it takes to address closure and post-closure care activities using public funds, the costs of those activities may be significantly higher than if they were addressed immediately by the firm responsible for the activities. Furthermore, selection of a test that results in lower public costs in consistent with the Agency's position that it is equitable to make the party who creates the environmental obligation pay for it. Test 902 results in lower public costs than Test 94, and is one of the most cost-effective tests examined by the Agency.

The Agency has developed proposed regulatory language for Test 902 but, in light of the fact that Test 94 is the lowest cost test, the Agency solicits comment on both Test 94 and 902. If, after evaluating public comment, the Agency decides that the benefit of Test 94 (lowest cost test) outweighs the benefits of Test 902 described above, the Agency will develop regulatory language for Test 94 in the final rule.

3. Financial Test for Liability Coverage

The Agency analyzed alternative tests for liability coverage using the same set of alternative tests as in the analysis for alternative test for closure and post-closure care. As discussed earlier, the analysis shows different results than the analysis for closure and post-closure care because the public and private costs for liabilty coverage are different than for closure and post-closure care.

EXHIBIT 2.—RESULTS OF ALTERNATIVE FINANCIAL TESTS FOR LIABILITY COVERAGE

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
L-37	Net Worth of at least $10 Million	$389	$2,943	$3,331
L-43	Net Worth of 1 × Liability Coverage Requirement Net Worth of a least $10 Million Plus Net Worth in the amount of the Liability Coverage Requirement.	7,107	2,659	9,767

Exhibit 2.—Results of Alternative Financial Tests for Liability Coverage--Continued

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
Current Test	Net Worth of at least $10 Million Both Net Worth and Net Working Capital at least 6 × Liability Coverage Requirement	30,698	2,080	32,779

Exhibit 2 shows the total public and private costs of two of the top ten financial tests for liability coverage. The least-cost test, Test 37, is very easy to pass. It requires an owner or operator to have $10 million in net worth and to have net worth one times the liability coverage requirement (the net worth of a firm can be applied to both requirements simultaneously). The test has very low private costs because almost every firm with over $10 million in net worth can pass it. At the same time, although every bankrupt firm in the Agency's sample of firms can pass the test, the public costs of the test are relatively low. Because public costs for third party liability judgments are not incurred unless a firm goes bankrupt and faces a liability judgment, which are both low probability events, public costs of the alternative tests are relatively low.

The Agency, however, does not prefer Test 37 because, as discussed in the previous section, tests with net worth multiples of one may actually lead to more substantial public costs than shown in the calculations because a liability obligation itself may cause bankruptcy. While the probability of a liability judgment facing a bankrupt firm is low, the potential amount of one incident could be in the millions of dollars, causing a firm with low net worth (i.e., $10 million) to declare bankruptcy. In such a case, the public costs could be much higher than the $2.9 million shown for Test 37 in Exhibit 2. While the Agency recognizes that the nature of liability coverage may dictate an easier test than for closure and post-closure care, the Agency is mandated to protect human health and the environment, and thus prefers a test that is less likely to risk a failure to address significant compensation of third parties in a timely manner.

Thus, the Agency prefers Test 43, a net worth additive requirement of one. This test, like Test 37, is a minimal requirement with no ratios. It has high availability to viable firms (about 95 percent of obligations covered) and thus much lower private costs than the current test (which has private costs of over $30 million). Test 43 also provides assurance that a firm passing the test will have a sufficient cushion of net worth to prevent a liability obligation from causing bankruptcy, thus it is more reliable at controlling public costs than Test 37.

However, in light of the fact that Test 37 is the lowest cost test, the Agency solicits comment on both Test 37 and Test 43. The Agency has developed proposed regulatory language for Test 43. If, after evaluating public comment, the Agency decides that the benefit of Test 37 (lowest cost test) outweighs the benefits of Test 43 described above, the Agency will develop regulatory language for Test 37 in the final rule.

4. Financial Test for Closure, Post-Closure Care, and Liability Coverage

The Agency also analyzed alternative tests for use in providing financial assurance for the combination of closure, post-closure care, and liability coverage. Under the current regulations, firms are required to pass the financial test for closure and post-closure care in order to provide coverage for the combination of closure, post-closure care, and liability coverage. The Agency examined alternative tests for the combined obligations to determine whether this approach is still appropriate.

Exhibit 3.—Results of Alternative Financial Tests for Closure/Post Closure Care After Providing Liability Coverage

Test	Test requirements	Private costs ($ thousands)	Public costs ($ thousands)	Total costs ($ thousands)
C/PC–902	Net Worth of at least $10 Million Plus Net Worth in the amount of Closure, Post-Closure Care, and Liability Cost Estimate. Pass Either of Two Ratios: —Cashflow – $10 Million/Total Liabilities > 0.10 or —Total Liabilities/Net Worth < 1.5	$13,052	$4,181	$17,233
C/PC–95	Net Worth of at least $10 Million Pass Either of Two Ratios: —Cashflow – (0.66 × FR)/Total Liabilities > 0.10 or —Total Liabilities/Net Worth < 1.5 Net Worth at least 1 × Closure Post-Closure Care, and Liability Cost Estimates	11,223	7,218	18,441
Current Test	Net Worth of at least $10 Million Pass Two of Three Ratios: —Cashflow/Total Liabilities > 0.10 —Total Liabilities/Net Worth < 2.0 —Current Assets/Current Liabilities > 1.5 Both Net Worth and Net Working Capital at least 6 × Closure, Post-Closure Care, and Liability Cost Estimate	27,368	8,889	36,257

Exhibit 3 shows the total public and private costs of the two lowest cost financial tests for the combined obligations. The lowest cost test, Test 902, is the same test as the one preferred by the Agency for closure and post-closure care only. This test requires a firm to pass either a cash flow ratio or a leverage ratio, and to have net worth at least equal to the total cost estimates for closure and post-closure care and the liability coverage requirement, in addition to $10 million in net worth (an additive requirement). Test 95, the second lowest cost test, requires a firm

to pass either a cash flow ratio or a leverage ratio, and to have net worth of one times the total cost estimates for closure and post-closure care and the liability coverage requirement (a multiple requirement).

The Agency prefers Test 902 for firms using the test to cover the combination of closure, post-closure, and liability coverage. This test was the lowest cost test when the combined obligations were imposed on sample firms. It is also consistent with the Agency's current approach of requiring the closure/post-closure requirements to be passed for firms using the test for the combination of obligations. Finally, unlike Test 95, Test 902 imposes the net worth additive requirement and thus protects against the potential for increased public costs that may result from a closure, post-closure, or liability obligation causing bankruptcy. The Agency requests comment on its proposed decision to adopt Test 902 for firms using the test to cover the combination of closure, post-closure, and liability coverage.

The Agency has developed proposed regulatory language for Test 902 but also solicits comment on Test 95. If, after evaluating public comment, the Agency decides to adopt Test 95, the Agency will develop regulatory language for Test 95 in the final rule.

Commenters should note that the current financial tests for closure and post-closure, third party liability, and combined coverage are consistent in approach in that they all have a minimum net worth additive requirement. The Agency believes that a consistent approach among the three tests is desirable and assists in implementation, thus, the Agency seeks to adopt revised tests with a consistent approach as well. Commenters should consider consistency in approach when evaluating the proposed financial tests described above.

5. Bond Rating Alternative

The Agency is proposing to include a bond rating alternative in the revised financial tests for closure and post-closure and for liability coverage. As discussed in section III.B.1.(e) of this preamble, when the Agency developed the current financial tests in 1981, it included a bond rating alternative because it found that the net working capital requirements of the tests discriminated against electric utilities. The Agency believed that an investment grade bond rating was a good demonstration of financial strength because it reflected the expert opinion of the bond rating service and the financial community. The Agency also believed that allowing a bond rating alternative would enhance the availability of the financial test to financially sound firms with unusual characteristics while ensuring that firms passing the requirement have sufficient financial strength to fund the potential costs of closure and post-closure and third party liability.

As a result of the revisions to the financial tests that are proposed today, the Agency believes there is less need for a bond rating alternative than there was in 1981. However, bond ratings reflect the expert opinion of bond rating services, which are organizations that have established credibility in the financial community for their predictions. And, the Agency believes that investment grade bond ratings are a good demonstration of financial strength. Absent a compelling indication that bond ratings have permitted inappropriate companies to pass the financial test, the Agency does not believe it should eliminate a market-oriented option currently available to the regulated community.

As part of the bond rating alternative proposed today, the Agency is also proposing to eliminate the requirement for having net worth equal to six times the amount assured and replacing this requirement with a $10 million additive requirement. The Agency believes that this change is supported by the analysis provided in connection with other revisions to the ratio-based financial test.

The Agency solicits comment on its proposal to include bond rating altenatives in the financial tests for closure and post-closure and for liability coverage.

6. Integration with Other Programs and Conforming Changes

Integration with Other Programs. The Agency has a number of financial responsibility programs in place that allow an owner or operator to use a financial test as a way to demonstrate financial responsibility. In order for the subtitle C financial test to effectively ensure that an owner or operator will not go bankrupt without fulfilling his closure/post-closure or liability coverage obligations, the financial strength of the firm must be sufficient to cover all of its obligations, including routine business expenditures and environmental obligations under all Agency programs. If the financial test criteria do not require a firm to account for all financial assurance obligations under all programs, a firm could use the same financial measures to demonstrate financial strength for multiple programs, which could undermine the effectiveness of the test. For example, if a firm is subject to financial responsibility requirements under both subtitle C and the Underground Injection Control (UIC) program and uses the financial test to demonstrate financial responsibility for each program separately, the firm would be demonstrating only that it could afford the obligations of each program independently. However, if the firm incurred costs to cover closure of a UIC well, its financial position could deteriorate to the extent that it could not afford any subtitle C costs despite its ability to pass the test for those costs alone.

The current subtitle C financial test requirements require owners or operators to account for both the subtitle C obligations being covered by the financial test and plugging and abandonment costs associated with Class I UIC wells that are covered by the financial test allowed under 40 CFR part 144. Since the promulgation of the current subtitle C financial test, the Agency has adopted additional financial assurance requirements applicable to the costs of closure of PCB commercial storage facilities under 40 CFR part 761, and corrective action and third-party liability coverage for underground petroleum storage tanks under 40 CFR part 280. All of these programs included a financial test as an allowable financial assurance mechanism.

The Agency continues to believe that the effectiveness of the subtitle C financial test could be jeopardized if the obligations of other financial assurance programs are not incorporated into the requirements of the subtitle C financial test. Thus, the Agency is proposing to require that a firm using the financial test for subtitle C closure, post-closure care, or liability coverage must account for all obligations also covered by a financial test under parts 144, 280, and/or 761. Specifically, a firm using the subtitle C financial test must have net worth of $10 million plus net worth in the amount of the subtitle C closure, post-closure, and liability obligations being covered, and net worth in the amount of any obligations being covered by a financial test, including those under parts 144, 280, and/or 761.

Conforming Changes. As noted above, the Agency has promulgated financial responsibility requirements under 40 CFR part 144 for Class I hazardous waste underground injection facilities, part 280 for underground storage tanks, and part 761 for PCB commercial storage facilities, all of which include a financial test similar or identical to the one included under RCRA subtitle C.

The financial assurance requirements for owners and operators of underground petroleum storage tanks under 40 CFR part 280 allow the use of a financial test for providing financial assurance for the costs of corrective action and third party liability coverage. The financial test in part 280 includes two alternative sets of financial criteria that may be used. The second alternative (§ 280.95(c)(1)) allows an owner or operator to satisfy the subtitle C financial test for liability coverage (§ 264.147(f)(1)). As a result of this rule, owners and operators of underground storage tanks wishing to use the § 280.95(c)(1) alternative to demonstrate third-party liability coverage would have to meet the requirements of the revised § 264.147(f)(1).

40 CFR part 761 requires that commercial storers of PCB wastes demonstrate financial responsibility for the costs of closure either by obtaining specific financial assurance mechanisms (e.g., trust funds, letters of credit) that will ensure that funds will be available to cover the costs of closure, or by passing a specified financial test. These provisions are found in 40 CFR part 761.65 (f) and (g). The financial assurance mechanisms in the PCB notification and manifesting rule are essentially the same as those allowed in 40 CFR parts 264 and 265 governing hazardous waste TSDFs. The regulations in 40 CFR part 761, in fact, incorporate sections of part 264 by reference, including § 264.143(f) which covers the provisions of the subtitle C financial test. Therefore, to the extent that today's proposed revisions to parts 264 or 265 modify the requirements that are incorporated by reference in part 761, those modifications would apply with equal force and effect to PCB commercial storage facilities subject to 40 CFR 761.65 (f) and (g).

The Agency is not proposing changes to the financial test requirements under 40 CFR part 144 regarding Class I underground injection facilities. The Agency is still assessing the applicability of the revised Subtitle C corporate financial test upon owners or operators of UICs and may propose to adopt the revised subtitle C corporate financial test at a later date.

7. Combining the Financial Test with Other Mechanisms

The current subtitle C financial responsibility requirements for closure and post-closure care allow owners and operators of TSDFs to use the financial test or guarantee to cover multiple facilities, and to combine the use of the financial test with another mechanism (or mechanisms) to cover multiple facilities. However, the regulations prohibit combining the financial test or guarantee with another mechanism for one particular facility. The Agency was concerned that if a firm did not have sufficient financial strength to cover the full amount of closure and post-closure care for a facility, there could be a greater risk that the firm would go bankrupt without fulfilling its obligations.

The Agency is proposing to amend this requirement to allow owners and operators to combine the financial test or guarantee with any other mechanism for a particular facility.

The Agency does not believe that combining the financial test or guarantee with another mechanism to demonstrate financial assurance being provided by the firm. In designing a financial test, the objective is to ensure that a firm has sufficient financial strength to cover the amount of financial obligations being covered by the test. Therefore, allowing an owner or operator to use a financial test for part of his obligations will not affect the effectiveness of the test as long as another instrument is used to cover the balance of the obligations.

It should be noted, however, that the Agency is not proposing to allow the combining of a financial test with a guarantee or a particular facility. The Agency believes that where the financial test is the only mechanism relied on to cover the costs of closure or post-closure, either by the owner or operator itself or the guarantor, one or the other should have the requisite financial strength to guarantee those costs for the entire facility.

IV. Amendments to the September 1, 1988 Rule Regarding Third Party Liability Coverage

A. Background

On September 1, 1988, the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third party liability. (*see* 53 FR 33938). Prior to the September 1, 1988 rule, the RCRA regulations at 40 CFR 264.147 allowed the use of a financial test or a parent corporate guarantee for third party liability assurance; the Agency, in that rulemaking, expanded the options to include the letter of credit, surety bond, trust fund, and non-parent corporate guarantee. The September 1, 1988 rulemaking also established in §§ 264.147 and 265.145 a claims reporting requirement for third-party claims.

Chemical Waste Management, Inc. (CWM) challenged several provisions of the September 1, 1988 rulemaking, in particular, several provisions related to the letter of credit and the claims reporting requirement. On February 23, 1990 the parties entered into a Joint Stipulation of Settlement in which the Agency agreed to: (1) Revise the claims reporting requirement of §§ 264.147 and 265.147 to clarify the type of claims that must be reported; (2) amend § 264.151(k) to authorize the creation of a standby trust fund for owners and operators who obtain letters of credit to demonstrate liability coverage; and (3) issue a correction to §§ 264.147(a)(2) and 265.147(a)(2) to insert a reference to the financial test. In accordance with the February 23 settlement agreement, this notice proposes changes to the claims reporting requirement of §§ 264.147 and 265.147 and the use of a standby trust fund under § 264.151(k). The technical correction to §§ 264.147(a)(2) and 265.147(a)(2) can be found in a correction notice published elsewhere in today's issue.

In addition to the changes resulting from the settlement agreement, the Agency is proposing to amend §§ 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage.

B. Claims Reporting Requirement

As is discussed above, the September 1, 1988 rule established in §§ 264.147 and 265.147 a requirement that owners and operators report, in writing, to the Regional Administrator whenever: (1) A claim for bodily injury or property damages caused by the operation of a hazardous waste management facility is made against the owner, operator, or instrument providing financial assurance for liability coverage; and (2) the amount of financial assurance for liability coverage is reduced. In its complaint filed in response to the September 1, 1988 rulemaking, CWM challenged that the claims reporting requirement, as worded, was overly broad and thereby unduly burdensome. CWM pointed out that it required reporting of every claim filed against the owner or operator, no matter how valid.

This reporting requirement is intended to provide the Agency with early warning of potential instrument failure due to pending claims and to provide the Agency with data concerning the incidence of third party claims. Today's notice proposes to revise §§ 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) to clarify

that intent and require reporting of third party claims only when: (1) A claim results in reduction of the amount of an instrument; (2) a Certification of Valid Claim is entered between the owner or operator and third party claimant; or (3) when a final court order establishing a judgment is issued. The Agency believes that this revised reporting requirement would allow the Agency to collect the information it intended to collect without being unduly burdensome.

C. Standby Trust for Owners and Operators Who Use a Letter of Credit to Demonstrate Liability Coverage

In establishing the letter of credit as an instrument available for third party liability coverage, the September 1, 1988 rule required, in §§ 264.147(h), 265.147(h), and 264.151(k), that owners or operators using letters of credit demonstrate liability coverage to designate third-party claimants as beneficiaries in the event of a valid claim. As promulgated, those provisions required the issuer of the letter to determine whether a claim is valid and should be paid. In accordance with the February 23 settlement agreement, today's notice proposes to amend the letter of credit requirements (§§ 264.147(h) and 265.147(h)) and the language of the letter of credit mechanism (§ 264.151(k)) to allow for the creation of the standby trust fund and the designation of an independent trustee as beneficiary. As a result of this change, the trustee, rather than the issuer of the letter of credit, would be responsible for distributing funds to the claimants when a claim for damages is filed against the owner or operator. The proposed rule would also add new sections in 264.147(l), 265.147(l) and 264.151(n) relating specifically to the requirements and instrument language of the standby trust. The Agency believes that these revisions would make the letter of credit more available to owners and operators without reducing its integrity.

D. Instruments Available to Owners and Operators that no Longer Meet the Requirements of the Financial Test

The Agency is also proposing conforming changes to §§ 264.147(f)(6) and 265.147(f)(6). Those provisions currently require owners or operators that have been using the financial test to assure for third party liability, but no longer meet the requirements of the test, to obtain insurance. Today's proposal would expand the available instruments to allow those owners and operators to obtain insurance or a letter of credit, surety bond, trust fund, or a guarantee. This proposed change is a conforming change that implements the intent of the September 1, 1988 rule expanding the allowable instruments for third party liability coverage.

V. Release from Financial Assurance Requirements for Closure

The current RCRA regulations at §§ 264.119(b) and 265.119(b) require owners and operators to record notations on property deeds within 60 days of certifying closure and submit to the Regional Administrator a certification that the deed notation has been recorded. The deed notation is designed to notify potential buyers that the land has been used to manage hazardous wastes and that its use is restricted under 40 CFR subpart G regulations.

At the same time, §§ 264.143(i) and 265.143(h) provide that the Regional Administrator will release owners and operators from financial assurance requirements within 60 days of receiving certification that final closure has been completed in accordance with the approved closure plan (unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan). There is currently no explicit language stating that release from financial assurance requirements is conditioned upon a demonstration that the owner or operator has fully complied with the requirements of §§ 264.119(b) and 265.119(b).

Today's proposal would explicitly require that the owner or operator fully comply with any applicable provisions of §§ 264.119(b) or 265.119(b) before being released from financial assurance obligations under current §§ 264.143(i) and 265.143(h). While this requirement would impose no additional regulatory burden on owners or operators, the Agency believes it would assure prompt compliance with §§ 264.119(b) and 265.119(b).

VI. The Expanded Guarantee for Demonstrating Financial Assurance for Closure and Post-Closure Care

The Agency is proposing in this notice to amend the requirements for the guarantee for closure and post-closure care to allow guarantees to be provided by a non-parent firm.

The use of a parent corporate guarantee for liability coverage was authorized in an interim final rule on July 11, 1986 (51 FR 5350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Several commenters on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency, in the September 1, 1988 rulemaking discussed in section III of this preamble, authorized guarantees for third-party liability coverage provided by (1) corporate grandparents, (2) corporate "sibling" firms, and (3) firms with a "substantial business relationship" with the owner or operator. Further discussion of the non-parent guarantee can be found in the September 1, 1988 rule (53 FR 33938).

Since authorizing the non-parent guarantee as an allowable mechanism for third party liability coverage, the Agency has received many requests to extend its use to closure and post-closure care financial responsibility requirements, including the petition submitted by NSWMA and discussed earlier in this notice. Today's notice proposes a conforming change to §§ 264.143, 264.145, 265.143, and 265.145 to allow the same non-parent guarantee for closure and post-closure as is currently allowed for third-party liability.

VII. Automated Financial Responsibility Reporting System

In addition to the regulatory provisions proposed today, the Agency is considering the development of an automated financial responsibility reporting system. Using information from public databases, such a system could perform many activities including updating cost estimates for inflation, calculating the financial test, and verifying that the value of another instrument matches the cost estimate. Since the system could use public databases, it could significantly reduce the administrative burden on the regulated community as well as on the States and the Agency. Such a system could also track obligations of multistate firms in all states and provide comprehensive and consistent information about those firms to the Agency and the states. The Agency today solicits comment on the utility of developing an automated financial responsibility reporting system.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, the Agency retains 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 the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interm.

B. Effect of Rule on State Authorizations

Today's rule proposes standards that would not be effective in authorized States since the requirements would not be imposed pursuant to the HSWA. Thus, the requirements would be applicable only in those States that do not have final authorization. In authorized States, the requirements would not be applicable until the State revises its program to adopt equivalent requirements under State law.

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

Several provisions in today's proposed rule are more stringent than the current Federal program. Because the Agency believes that today's proposed revisions to the corporate financial test at §§ 264.143(f) (1) and (2), 264.145(f) (1) and (2), 264.147(f) (1), 265.143(e) (1) and (2), 265.145(e) (1) and (2), and 265.147(f)(1), and the corresponding revisions to the instruments at 264.151 (f) and (g), would result in a test that would screen potentially bankrupt firms more effectively than the current test, the Agency is classifying those revisions as more stringent than the current federal program. As a result, an authorized State that allows a financial test to demonstrate financial responsibility for closure and post-closure care or third-party liability coverage would have to modify its program to adopt this or an equivalent test in accordance with the deadlines specified in 40 CFR part 271. An authorized State that does not allow use of a financial test would not be required to adopt one as a result of today's proposed rule.

In addition, today's proposed revisions to §§ 2264.119(b)(2), 264.143(i), 265.119(b)(2), and 265.143(h), which provide that release from financial responsibility requirements be conditioned on compliance with the deed notification requirements, are more stringent than the current program requirements.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect more stringent Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which a State must modify its program to adopt the more stringent provisions of today's proposed rule will be determined by the date of promulgation of the final rule in accordance with § 271.21(e). This deadline can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of the Agency until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

The provisions of today's rule that would expand the allowable instruments for demonstrating financial assurance are less stringent than the current program. Those proposed revisions are: (1) Revisions to §§ 264.147(h) (4) and (5), 265.147(h) (4) and (5), and 264.151(k), and addition of new section 264.151(n), which would provide for the use of a stand-by trust with the letter of credit to demonstrate financial assurance for liability coverage requirements; (2) revisions to §§ 264.143(f)(10), 264.145(f)(11), 265.143(e)(10), and 265.145(e)(11), which would extend the use of the expanded guarantee to closure and post-closure care financial assurance, and the corresponding modified instrument at § 264.151(h); (3) revisions to §§ 264.143(g), 264.145(g), 265.143(f), and 265.145(f), which would allow the combining of the financial test or guarantee with another instrument to demonstrate financial assurance at a single facility; and (4) revisions to §§ 264.147(f)(6) and 265.147(f)(6), which would expand the mechanisms available to owners and operators that no longer meet the requirements of the financial test for liability coverage. For these Federal program changes that are less stringent or would reduce the scope of the Federal program, an authorized State would not be required to modify its authorized program. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

The September 1, 1988 rule related to liability coverage established a claims reporting requirement at §§ 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7). The preamble characterized all provisions of that rule as less stringent and, therefore, authorized States were not required to adopt the new provisions, including the claims reporting requirement. However, upon further consideration the Agency has determined that this claims reporting requirement is, in fact, more stringent

than the Federal program in effect at that time.

Because the claims reporting requirement of § 264.147(a)(2), 264.147(b)(2), 265.147(a)(2), and 265.147(b)(2) was more stringent than the Federal program in place prior to the September 1, 1988 rule, States should have been required to modify their programs to include it in order to maintain an equivalent program. In accordance with § 271.21(e)(2), the deadline for States to modify their programs to reflect changes adopted on September 1, 1988 was July 1, 1990. However, the States were not notified of this obligation since the rule was originally classified as less stringent. Because of the confusion related to the stringency characterization of the claims reporting requirement and the fact that the Agency is in the process of clarifying that requirement, the Agency will, for State authorization purposes, treat the claims reporting requirement of the September 1, 1988 rule as if it were promulgated on the date that the final clarified version is promulgated. States that have not yet adopted the reporting requirement of the September 1, 1988 rule should not do so but should adopt the clarified version when promulgated. The deadline for adopting the provision will be the applicable deadline under § 271.21(e)(2) for the final rule promulgating the clarified reporting requirement. States that wish to adopt other provisions of the September 1, 1988 rule may do so and may apply for authorization for those provisions at any time.

The revisions to the claims reporting requirement that are proposed today, however, are less stringent than the current claims reporting requirement at §§ 264.147 (a)(7) and (b)(7) and 265.147 (a)(7) and (b)(7) promulgated in the September 1, 1988 rule. Therefore, States that have already adopted the current claims reporting requirement would not be required to adopt the clarified reporting requirement.

States whose programs have been modified to adopt the current claims reporting requirement but wish to adopt the less stringent clarified reporting requirement should follow the deadlines of 40 CFR 271.21(e)(2) for the final rule promulgating the clarified reporting requirement.

IX. REGULATORY ANALYSIS

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether it must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore the Agency has not prepared a Regulatory Impact Analysis for today's rule. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. at the time an Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule modifies the Corporate Financial Test such that a greater number of viable firms may pass the test while excluding those firms which become bankrupt than the previous test. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Dated: June 17, 1991.

William K. Reilly,

Administrator.

List of Subjects

40 CFR 264

Hazardous Waste Insurance, Reporting and recordkeeping requirements.

40 CFR 265

Hazardous Waste Insurance, Reporting and recordkeeping requirements.

40 CFR 280

Hazardous substances, Hazardous waste.

40 CFR 761

Environmental Protection, Hazardous substances, Polychlorinated biphenyls (PCB's), Reporting and Recordkeeping requirements.

40 CFR part 264 is amended as follows:

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

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

Authority: 41 U.S.C. 6905, 6912(a), 6924 and 6925.

2. Section 264.119 is amended by adding a sentence to the end of paragraph (b)(2) to read as follows:

§ 264.119 Post-closure notices.

* * * * *

(b) * * *

(2) * * * The Regional Administrator shall not release the owner or operator from financial assurance requirements under § 264.143(i) until the owner or operator has complied with the provisions of this paragraph.

* * * * *

3. Section 264.143 is amended by revising paragraphs (f)(1) and (f)(2), the introductory text of paragraph (f)(10), and paragraphs (g) and (i) to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(f) *Financial test and guarantee for closure.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1) (i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other

obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f) (1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, and, for facilities subject to § 264.119, after receiving the certification required under § 264.119(b)(2), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 264.119. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 264.119.

4. Section 264.145 is revised by amending paragraphs (f)(1) and (f)(2), the introductory text of paragraph (f)(11), and paragraph (g) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(f) *Financial test and guarantee for post-closure care.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1) (i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owner or operators in paragraphs (f) (1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in

consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for post-closure of the facility.

* * * * *

5. Section 264.147 is amended by revising paragraphs (a)(7), (b)(7), (f)(1), and (f)(6) and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)((1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii) of this section.

(i) The owner or operator must have:

(A) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million;

(B) Assets located in the United States amounting to at least 90 percent of total assets or at lest six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

7. Section 264.151 is amended by revising paragraphs (f), (g), (h), and (k) and adding a new paragraph (n) to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(f) A letter from the chief financial officer, as specified in § 264.143(f) or § 264.145(f) or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and or post-closure costs, as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following two paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its

EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which financial assurance for closure and/or post-closure costs is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____.

The firm identified above guarantees, through the guarantee specified in Subpart H of 40 CFR parts 264 and 265, financial assurance for closure and/or post-closure costs at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs].

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: _____.

7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under part 761 and is assured through a financial test. The amount of assurance required is shown for each facility. _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.143 or § 264.145, or of paragraph (e)(1)(i) of § 265.143 or § 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.143 or § 264.145, or of paragraph (e)(1)(ii) of § 265.143 or § 265.145 of this chapter are used].

Alternative I

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above]_____

$ _____

*2. Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of the portion from this line and add that amount to lines 3 and 4). _____

*3. Tangible net worth _____

*4. Net worth _____

*5. The sum of net income plus depreciation, depletion, and amortization _____

*6. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.).

	yes	no

7. Is line 3 minus line 1 least $10 million? _____

8. Is line 2 divided by line 4 less than 1.5? _____

9. Is line 5 divided by line 2 greater than 0.1? _____

*10. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)? _____

11. Does the firm answer YES to *either* of question 8 or 9, *and* question 7 and 10? _____

Alternative II

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above] _____$

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] _____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.).

	yes	no

7. Is line 5 minus line 1 at less $10 million? _____

*8. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?_____

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in subpart H of 40 CFR parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are

no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265: _____

The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 CFR parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 CFR parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____

[Fill out the following three paragraphs regarding facilities and associated assured costs. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and amount of assured costs].

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____

6. This firm is the owner or operator or guarantor of the following petroleum underground storage tank facilities for which financial assurance is required under part 280 and is assured through a financial test. The amount of assurance required is shown for each facility: _____

7. This firm is the owner or operator or guarantor of the following PCB commercial storage facilities for which financial assurance is required under part 761 and is assured through a financial test. The amount of assurance required is shown for each facility. _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements under parts 264 and 265].

Part A. Liability Coverage for Sudden and Non-Sudden Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used].

Alternative I

1. Sum of required sudden and nonsudden liability coverage.
*2. Tangible net worth.
*3. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.).

	yes	no

4. Is line 2 minus line 1 at least $10 million?
*5. Is line 3 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?
6. Does the firm answer YES to both questions 4 and 5?

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated.
2. Current bond rating of most recent issuance and name of rating service.
3. Date of issuance of bond.
4. Date of maturity of bond.
*5. Tangible net worth.
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).

	yes	no

7. Is line 5 minus line 1 at least $10 million?
*8. Is line 6 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of § 265.143 or § 265.145 and (f)(1)(ii) or § 265.147 are used].

Alternative I

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured [total of all cost estimates shown in the seven paragraphs above].

$ _____

2. Amount of annual aggregate liability coverage to be demonstrated.

$ _____

3. Sum of lines 1 and 2.

$ _____

*4. Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 5 and 6).
*5. Tangible net worth
*6. Net worth
*7. The sum of net income plus depreciation, depletion, and amortization
*8. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.).

	yes	no

9. Is line 5 minus line 3 at least $10 million?
10. Is line 4 divided by line 6 less than 1.5?
11. Is line 7 divided by line 4 greater than 0.1?
*12. Is line 8 greater than six times line 3 (required only if less than 90 percent of firm's assets are located in the U.S.)?
13. Does the firm answer YES to either to question 10 or 11, *and* questions 9 and 12?

Alternative II

1. Sum of current closure and post-closure cost estimates and other environmental costs to be assured (total of all cost estimates shown in the seven paragraphs above).
$ ———
2. Amount of annual aggregate liability coverage to be demonstrated.
$ ———
3. Sum of lines 1 and 2.
$ ———
4. Current bond rating of most recent issuance and name of rating service
5. Date of issuance of bond
6. Date of maturity of bond
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)
*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).

	yes	no
9. Is line 7 minus line 3 at least $10 million?		
*10. Is line 8 greater than six times line 1 (required only if less than 90 percent of firm's assets are located in the U.S.)?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] ———
[Name] ———
[Title] ———
[Date] ———

(h)(1) A corporate guarantee, as specified in § 264.143(f) or § 264.145(f) or § 265.143(e) or § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the United States Environmental Protection Agency (EPA), obligee, on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]".

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both].

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by subpart G of 40 CFR parts 264 and 265 for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR parts 264 and 265.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: Amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR part 264 or 265.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of 40 CFR parts 264 and 265 for the above-listed facilities, except as provided in paragraph 9 of this agreement. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may cancel this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be canceled unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate closure and/or post closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator]

Guarantor may cancel this guarantee 120 days following the receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: ———

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary: ——— ———

(2) A guarantee, as specified in § 264.147(g) or § 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ———" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of

[name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State]. This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guranatee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for what [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Principal

(Notary) Date

[Signatures]
Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness of notary:
* * * * *

(k) A letter of credit, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution
Regional Administrator(s)
Region(s)
U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund:] "(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor

[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

(l) * * *

(n)(1) A standby trust agreement, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that institutions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partneship," association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental ocurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrance and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This

exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee or [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of 40 CFR 264.151(k) and section 4 of this Agreement.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State Government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. *Trustee Compensation.* The Trustee shall be entitled to reasonable

compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot of does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. *Instructions to the Trustee.* All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the EPA Regional Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 14. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist.

Section 15. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 18. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(n) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in §§ 264.147(h) or 265.147(h) or this chapter. State requirements may differ on the proper content of this acknowledgement.

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR part 265 is amended as follows:

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

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

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

2. Section 265.119 is amended by adding a sentence to the end of paragraph (b)(2) as follows.

§ 265.119 Post-closure notices.

* * * * *

(b) * * *

(2) * * * The Regional Administrator shall not release the owner or operator from financial assurance requirements under § 265.143(h) until the owner or operator has complied with the provisions of this paragraph.

* * * * *

3. Section 265.143 is amended by revising paragraphs (e)(1), (e)(2), (e)(10) introductory text, (f), and (h) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(e) *Financial test and guarantee for closure.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1)(i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other

obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

* * * * *

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Administration may use any or all of the mechanisms to provide for closure of the facility.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, and, for facilities subject to § 265.119, after receiving the certification required under § 265.119(b)(2), the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 265.119. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of § 265.119.

4. Section 265.145 is amended by revising paragraphs (e)(1) and (2), the introductory text of paragraph (e)(11), and paragraph (f) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(e) *Financial test and guarantees for post-closure care.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1)(i) or (ii) of this section.

(i) The owner or operator must have:

(A) Either a ratio of total liabilities to net worth less than 1.5; or, a ratio of the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities greater than 0.10; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of current closure and post-closure cost estimates and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and any other obligations covered by a financial test.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1), of this section refers to the cost estimates required to be shown in paragraphs 1–7 of the letter from the owner's or operator's chief financial officer (264.151(f)).

* * * * *

(11) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e) (1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The

terms of the guarantee must provide that:

* * * * *

(f) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, and financial test and guarantee, except that the financial test and guarantee may not be combined. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), and (f), respectively, of this section, except that it is the combination of mechanisms rather than the single mechanism that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The Regional Admininstrator may use any or all of the mechanisms to provide for post-closure of the facility.

* * * * *

5. Section 265.147 is amended by revising paragraphs (a)(7), (b)(7), (f)(1), and (f)(6), and by adding new paragraphs (h)(4) and (h)(5) to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) a Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) * * *

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

* * * * *

(f) *Financial test for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (f)(1)(ii) of this section.

(i) The owner or operator must have:

(A) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million;

(B) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth greater than the sum of the amount of liability coverage to be demonstrated by this test plus $10 million; and

(C) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the amount of liability coverage and any other obligations covered by a financial test.

* * * * *

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the Regional Administrator within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

* * * * *

(h) * * *

(4) an owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund must be identical to the wording specified in § 264.151(n).

* * * * *

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July 1, 1991

Part IX

Environmental Protection Agency

40 CFR Part 86

Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3967-9]

Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; and Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's action proposes that 40 CFR part 86 be amended to add provisions which would authorize the Environmental Protection Agency (EPA) to collect fees for certain activities required of the Agency pursuant to the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*), as amended by Public Law 101–549, the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6201 *et seq.*), and the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001 *et seq.*). The authority for this rulemaking is the Independent Offices Appropriations Act (IOAA) (31 U.S.C. 9701), section 217 of the Clean Air Act, as amended, and the Omnibus Budget Reconciliation Act (OBRA) of 1990, Public Law 101–508, section 6501.

The fee program proposed today would cover EPA's Motor Vehicle and Engine Compliance Program (MVECP). The MVECP includes all compliance and enforcement activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance activities. The proposed fee would recover those compliance costs which the government incurs in providing manufacturers or Independent Commercial Importers (ICIs) with certificates of conformity, fuel economy labels, and Corporate Average Fuel Economy (CAFE) calculations necessary to market vehicles in the United States and to meet requirements otherwise imposed by statute. This program would apply to all manufacturers and ICIs of light-duty vehicles (LDVs), light-duty trucks (LDTs), heavy-duty vehicles (HDVs), heavy-duty engines (HDEs), and motorcycles (MCs).

When a manufacturer or an ICI decides to market vehicles or engines in the United States, EPA must perform certain activities necessary to ensure compliance with regulations pertaining to the MVECP. In doing so, EPA incurs costs which it is authorized to recover by the CAA and IOAA. This rulemaking would enable EPA to recover these costs through fees.

DATES: Written comments on this notice will be accepted for 30 days following the hearing, until August 22, 1991. EPA will conduct a public hearing on this notice of Proposed Rulemaking on July 23, 1991, in Ann Arbor, Michigan. The hearing will convene at 10 a.m. and will adjourn at such time as necessary to complete the testimony. Further information on the public hearing can be found in section VI, Public Participation, in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M–1500 (LE–131 , Waterside Mall, Attention: Docket No. A–91–15, 401 M Street SW., Washington, DC 20460. The public hearing will be held in the conference room of the Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Materials relevant to this proposed rulemaking are contained in Docket No. A–91–15. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Daniel L. Harrison, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668–4281.

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I. Introduction

Section 217 of the CAA, as amended in 1990, permits the EPA to establish fees to recover all reasonable costs associated with (1) new vehicle or engine certification under section 206(a) or part C,[1] (2) new vehicle or engine compliance monitoring and testing under section 206(b) or part C, and (3) in-use vehicle or engine compliance monitoring under section 207(c) or part C. In addition, the IOAA permits a government agency to establish fees for a service or thing of value provided by the agency to an identifiable recipient. The OBRA requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA.

Today's proposed action would establish a fee program to recover those costs incurred by EPA in administering the MVECP, including manufacturer [2] certification, SEA, certification compliance audits and investigations, in-use compliance monitoring, fuel economy labeling, and CAFE calculations. This fee program would be based on all recoverable direct and indirect costs associated with administering these activities.

The event which triggers EPA costs is the certification request.[3] Certification requests can be divided into three types corresponding to the three major divisions of regulated mobile sources: Light-duty vehicles and trucks (LDVs/LDTs); heavy-duty vehicles and engines (HDVs/HDEs); and motorcycles (MCs). Within each certification request type, all activities associated with the MVECP (certification, fuel economy, SEA, and in-use compliance programs) can be grouped together. By determining the costs and events associated with the MVECP, a fee can be calculated for each certification request type.

[1] Part C of the CAA, as amended, pertains to Clean Fuel Vehicles.

[2] Manufacturer, as used in this NPRM, means all entities or individuals requesting certification, including, but not limited to, Original Equipment Manufacturers and ICIs.

[3] A certification request is defined as a manufacturer's request for certification evidenced by the submission of an application for certification, Engine System Information (ESI) date sheet, or ICI Carry-Over data sheet.

For each certification request type, costs may vary within certain activities, such as confirmatory testing, auditing of manufacturer's testing and data, SEA, and in-use compliance monitoring and testing. However, every certification request is subject potentially to an equal amount of compliance review, testing, and auditing. Further, under the provisions authorizing manufacturer or confirmatory testing, EPA decisions on such testing are to be based on their merits and are not to be influenced by the fee program. Therefore, EPA proposes that a fair and equitable method of calculating costs is to determine the average cost to EPA, including all related activities, of providing each certification request type.

The goal of today's regulation is to make the MVECP self-sustaining to the extent possible. Those manufacturers benefiting from the services provided would bear the government's cost of administering the program on their behalf.

II. Background

A. Legal Authority

EPA is authorized under section 217 of the Clean Air Act, as amended by Public Law 101–549, section 225, to establish fees for specific services it provides to vehicle manufacturers. The CAA provides in pertinent part:

Consistent with section 9701 of title 31, United States Code, the Administrator may promulgate * * * regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) New vehicle or engine certification under section 206(a) or part C,

(2) New vehicle or engine compliance monitoring and testing under section 206(b) or part C, and

(3) In-use vehicle or engine compliance monitoring and testing under section 207(c) or part C.

OBRA requires EPA to assess and collect fees for services and activities carried out pursuant to laws administered by the EPA. OBRA also requires that EPA collect in aggregate fees of not less than $38,000,000 in fiscal years 1992, 1993, 1994, and 1995. The proposed MVECP fees would represent part of the aggregate EPA fees collected in each of these fiscal years. The Act further states that section 6501 neither increases nor diminishes EPA's authority to promulgate regulations pursuant to the IOAA.

EPA, as an independent regulatory agency, is also authorized under the Independent Offices Appropriation Act of 1952 to establish fees for other services and benefits it provides. This provision, originally designated as 31 U.S.C. 433(a), was codified into law on September 13, 1982, at 31 U.S.C. 9701. This provision encourages Federal regulatory agencies to recover, to the fullest extent possible, costs provided to identifiable recipients. The relevant text states:

> It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible. The head of an agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall be fair and based on costs to the Government, the value of the service or thing to the recipient, and other relevant facts.

The proper measure of a fee imposed under the IOAA reflects the value of the service to the recipient and the cost to the government. In *National Cable Television Ass'n* v. *United States*, 415 U.S. 336 (1974), the Supreme Court determined that fees were to be measured by the value of the service to the recipient. Subsequent court decisions have held that a fee under the IOAA may also be based on the costs incurred by the government in providing a service, so long as the imposed fee does not exceed such costs. See *Central & S. Motor Tariff Ass'n* v. *United States* 777 F.2d 722 (D.C. Cir. 1985); *Mississippi Power & Light Co.* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223 (5th Cir. 1979); *Public Service Co.* v. *Andrus*, 433 F.Supp. 144 (D. Colo. 1977); and *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976).

Several court decisions have interpreted the IOAA and set forth the general standards that agencies must meet in establishing fees under this Act. In 1974, the Supreme Court found that absent a clear Congressional intent a fee may only be charged for a special benefit provided to identifiable beneficiaries measured by its value to the recipient. See *National Cable Television Association* v. *United States*, 415 U.S. 336 (1974) and *Federal Power Comm'n* v. *New England Power Co.*, 415 U.S. 345 (1974). Congress may constitutionally authorize agencies to recover the total cost of administering a program from those regulated under the normal delegation standards. *Skinner* v. *Mid-Atlantic Pipeline Co.*, 490 U.S. 212 (1989). Congress may also authorize fees to be charged on a basis "reasonable related" to services and not on the basis of a special benefit. *Florida Power & Light Co.* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 1952 (1989). The Bureau of the Budget Circular A–25 (Circular) has traditionally provided administrative guidance for implementation of the IOAA when user fees are being charged only for special benefits. The Circular states the general policy that a "reasonable charge * * * should be made to each identifiable recipient for a measurable unit or amount of Government services or property from which he derives a special benefit."

Judicial decisions have provided guidance to federal agencies in determining which services provide "special benefits" to a recipient. Specifically, "special benefits" include services rendered at the request of a recipient or services which assist a person in complying with statutory or regulatory obligations. *National Cable Television Association* v. *Federal Communications Comm'n*, 554 F.2d 1109; *Mississippi Power & Light* v. *United States Nuclear Regulatory Comm'n*, 601 F.2d 223 (1979); *Nevada Power Co.* v. *Watt*, 711 F.2d 913 (1983).

"Special benefits" also result from services which assist manufacturers in marketing a quality product and gives them credibility in the marketplace. This view receives support in the Circular which states that a special benefit accrues when a service "provides business stability or contributes to public confidence in the business activity of the beneficiary." In recognition of the fact that manufacturers receive specific benefits from EPA activities, EPA proposes to implement fees for certain services it provides.

Court decisions have provided guidance on the criteria to be used in implementing fee schedules under the IOAA when user fees are being charged for special benefits. See *National Cable Television Ass'n* v. *Federal Communications Comm'n*, 554 F.2d 1094 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Comm'n*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communications, Inc.* v. *Federal Communications Comm'n*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions indicate the following factors are relevant in developing a fee program:

1. An agency may impose a reasonable charge on recipients for an amount of work from which the recipients benefit. The fees must be for specific services to specific persons.

2. The fees may not exceed the cost to the agency in rendering the service.

3. An agency may recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits which may flow from the service.

An agency, when it proposes a fee pursuant to the IOAA to recover special benefits, also needs to address the following matters set out in *Electronic Industries Ass'n* v. *Federal Communications Comm'n*, 554 F.2d at 1117:

1. The agency must justify the assessment of a fee by a clear statement of the particular service or benefit for which it seeks reimbursement.

2. The agency must calculate the cost basis for each fee by:

a. Allocating specific expenses of the cost basis of the fee to the smallest practical unit;

b. Excluding expenses that serve an independent public interest; and

c. Providing public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude a particular item.

3. The fee must be set to return the cost basis at a rate that reasonably reflects the cost of the services performed and valued conferred on the payor.

As detailed in the following, EPA believes it has fulfilled all of these aims in developing this proposal.

EPA believes the fees included in this proposal are justified based on the tests for fee recovery relating to special benefits applicable under IOAA. EPA also believes that CAA section 217 gives EPA additional support for imposing fees for the programs specified in that section. Section 217 authorizes EPA to establish fees "[c]onsistent" with IOAA "to recover all reasonable costs to the Administrator associated" with certification, recall and SEA testing. This section establishes Congress' position that the specified programs provide the type of benefit and have the type of costs that are appropriately recoverable under IOAA. Moreover, by providing authority to recover "all reasonable costs * * * associated" with the programs, Congress has given EPA authority to impose fees on a basis that can extend beyond the specific criteria used in interpreting IOAA. See *Florida Power & Light Co.* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert denied*, 109 S. Ct. 1952 (1989). If any commenters believe that any fee proposed by EPA for recovery for the programs identified in CAA section 217 is not recoverable under IOAA, the commenters are requested to discuss whether, in their view, the fees would be recoverable under the "all reasonable costs associated" test found in section 217.

B. Motor Vehicle and Engine Compliance Program Description

The CAA requires that motor vehicles, prior to being distributed or offered for sale in the United States, be covered by a certificate of conformity indicating compliance with the emission standards set forth in the Act. Each model year, EPA receives approximately 577 certification requests for LDVs/LDTs engine-system combinations, 135 for heavy-duty engine-system combinations, and 85 for motorcycle engine-system combinations. EPA processes these applications and makes a determination of conformance with the CAA and related regulations. If the vehicle or engine satisfies the prescribed emission standards, EPA issues a certificate of conformity for the relevant engine-system combination.[4]

The certification process includes, but is not limited to, application for certification review, durability justification review, emission-data vehicle approval and processing, and certification request processing and computer support. Other activities related to the certification process include auditing the applicant's testing and data collection procedures, laboratory correlation, and EPA confirmatory testing and compliance inspections and investigations related to certification.

EPA further ensures compliance with the CAA through activities such as investigations to prevent the sale of uncertified new vehicles and engines; ICI review, processing and approval for final importation of vehicles and engines; and SEA and in-use compliance programs. SEA activities include the selection and testing of vehicles and engines off the assembly line at various production plants around the world to determine compliance with emission standards. In-use compliance activities ensure that vehicles and engines continue to meet emission standards throughout their useful life.[5]

Based on the above activities, EPA determines whether a manufacturer meets the CAA requirements and should thereby be permitted to market vehicles for sale in the United States.

C. Fuel Economy Program Description

For LDVs/LDTs, EPA also administers the fuel economy program which includes several activities, such as fuel economy labeling and CAFE. These activities require EPA to do confirmatory testing of vehicles; review and audit manufacturers' vehicle and engine tests, calculations, and labels; furnish computer processing and computer programming support; and calculate fuel economy values.

Fuel economy labeling activities provide fuel economy values and other labeling information. These labels are used by automotive manufacturers both to market their product and meet the requirements of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6201. EPA also oversees CAFE activities which are used to determine each manufacturer's compliance with the corporate average fuel economy standards specified in EPCA. Annually, EPA processes approximately 1,250 fuel economy label requests and 500 CAFE calculations.

The fuel economy program is intertwined with the certification process of the MVECP for LDVs and LDTs. This interrelationship is demonstrated by the fact that both programs collect fuel economy and emissions data. Emission-data vehicles provide both emissions and fuel economy data. Further, fuel economy-data vehicles are tested for emissions and must comply with the emission standards. Only then can the fuel economy data be used in the fuel economy program. Thus, each program generates data to support the other and to support decisions on both certification and fuel economy. This interrelationship has allowed EPA to streamline the certification program and procedures, thereby minimizing costs directly incurred by the industry as well as by EPA.

Since EPA costs for fuel economy are interrelated and closely parallel those of certification, it is unnecessary, for fee purposes, to distinguish between the efforts expended on fuel economy and certification. Therefore, EPA costs per certificate and costs per fuel economy basic engine [6] can be combined and a fee assessed only on a certification request basis. The proposed fee encompasses the costs from both the certification and fuel economy activities

[4] As defined in 40 CFR 86.082–2, "engine-system combination" means an engine family-exhaust emission control system combination.

[5] Definitions of vehicle and engine useful life are included in sections 202 and 207 of the CAA, as amended.

[6] A fuel economy basic engine is a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator. It differs from an engine-system combination as used to distinguish designs for certification purposes in that the engine-system combination may include more than one engine displacement but only one emission control system, while a fuel economy basic engine may include more than one emission control system but only one engine displacement.

associated with the request for certification.

A combined fee for certification and fuel economy activities can also be justified by the process which leads to EPA activities and cost. Certification requests are made by a manufacturer for each engine-system combination. The certification request initiates EPA activities for both the certification and fuel economy programs. If a manufacturer did not request certification, neither the certification activities nor the fuel economy activities would be necessary and EPA would avoid costs incurred in administering these programs.

Even though there is a combined fee, the fuel economy portion of the fee would go to the general fund of the U.S. Treasury, while the certification portion of the fee would go to a special fund as required by the CAA. These Treasury funds are described later, under the section on fee collection.

D. Identification of Special Benefits

The CAA expressly authorizes the collection of fees for specific services, namely certification, SEA and in-use compliance monitoring and testing. Even without this express authority, EPA could impose fees for the services specified in the CAA, as well as other services included in this rule, pursuant to the IOAA. The IOAA allows agencies to impose fees for services which provide "special benefits" to identifiable recipients. The services provided by EPA under the MVECP result in "special benefits" to manufacturers.

By issuing a certificate of conformity, EPA assists the manufacturers in carrying out their responsibilities to comply with statutory and regulatory requirements which must be met in order to market vehicles in the U.S. In addition, certification assists manufacturers by reducing potential costs which could be incurred due to recall of noncompliant vehicles.

SEA testing helps provide assurances to manufacturers, as well as EPA, that production vehicles and engines actually meet emission standards. Similarly, the in-use compliance program provides manufacturers with information on the durability of their products. Both programs help maintain a "level playing field" by providing strong incentives for manufacturers to produce actual production vehicles and engines that meet emission standards when new as well as throughout their useful lives.

Fees for the fuel economy and CAFE calculations and labeling are not specifically authorized by the CAA since these programs are authorized under statutes directly concerned with fuel economy rather than pollution. The fuel economy and CAFE programs clearly provide a benefit to the manufacturers and, as such, fees for these programs are authorized by IOAA. The fuel economy labeling program benefits manufacturers as evidenced by the use of fuel economy figures in advertising campaigns to promote sales. Further, the availability of EPA's standardized procedure for calculating these figures provides manufacturers with an assured and equitable method for comparing fuel economy values. In addition, fuel economy and CAFE calculations enable manufacturers to comply with the regulatory requirements of EPCA.

III. Proposed Fee System

A. Activity Costs Proposed for Recovery Through This Rule

EPA proposes to recover through fees all allowable direct and indirect costs incurred for the MVECP. The direct costs associated with the MVECP involve numerous activities related to certification, fuel economy, SEA, and in-use compliance. These activities include pre-production certification; testing; confirmatory testing; certification compliance audits and investigations; laboratory correlation; in-use monitoring; fuel economy selection, testing, and labeling; CAFE calculations; and fee administration. The indirect costs associated with the MVECP include costs for facilities and supporting services.

B. Activity Costs Not Recovered Through This Rule

EPA conducts numerous activities related to certification and mobile source air pollution control, in general, for which it is not proposing to charge a fee at this time. These activities include: regulation development, emission factor testing, air quality assessment, and inspection and maintenance programs. Although these activities benefit manufacturers by indirectly facilitating the MVECP, EPA is still examining whether the costs are sufficiently "associated" with the programs specified in CAA section 217, or provide a sufficient special benefit, to be recoverable. EPA invites comment on whether EPA should recover fees for any of these activities in the future, and whether the activities are within the fee authority provided by CAA section 217.

C. Cost Determination

To calculate all direct and indirect costs specifically attributed to the fee categories in this proposed rule, EPA conducted an in-depth analysis of the resources expended on the MVECP. This analysis details all direct and indirect costs incurred by EPA to operate the MVECP. Using fiscal year 1991 budget data, EPA calculated costs for activities which are to be included in or excluded from the fee program. Budget data from 1991 was used since it is the most current data available.

Beginning in fiscal year 1992, pursuant to the CAA, new initiatives will be implemented, for example Tier I tailpipe standards, on-board diagnostics, cold temperature carbon monoxide (CO) standards, and certification short test procedures. These initiatives are expected to result in increased EPA services related to the MVECP. This, in turn, would both increase EPA's costs of conducting compliance activities and the fee charged manufacturers. These increased costs and subsequent changes in the fee schedule would be addressed in future rulemakings, as discussed below in the fee updating section.

The EPA Cost Analysis, "Motor Vehicle and Engine Compliance Program Fees Cost Analysis," is available in the Docket for this rulemaking.

D. Fee Schedule Objectives

To be consistent with the provisions of the IOAA and the CAA, EPA designed the proposed fee schedule following certain objectives:

1. Appropriate

The fee program should be fair, equitable, and easy to administer. The fee schedule should be sufficiently detailed to distribute the costs equitably across similar certification request types and should be based on general groupings within each certificate type. This would lessen administrative costs (and fees) to both EPA and industry. In addition, the fee, itself, should reflect the costs incurred by EPA to perform the MVECP activities.

2. Recovers Costs

EPA's goal is to design a fee schedule which would recover all direct and indirect costs associated with operating the MVECP. Cost recovery would also reasonably reflect EPA efforts and obligations to review, maintain, and ensure compliance with the MVECP.

3. Reflects Costs

Three factors could affect the proposed fee schedule: (1) Changes within the MVECP, (2) changes in the number of certification requests, and (3) inflation (including pay scale adjustments). As these factors change, the fee schedule would be revised. The method for revising the fee schedule is

discussed later in the Fee Updating section. The proposed fee schedule represents the most current MVECP data on EPA activities, costs, and number of certification requests.

4. Distributes Costs

The level of EPA review, auditing, confirmatory testing, and in-use compliance testing and monitoring may vary within each certification request type. However, each request potentially represents an equivalent amount of effort to other requests in the same certification request type and is subject to the same level of EPA scrutiny. Therefore, it is appropriate to distribute these costs across all certification requests of a similar type. This approach also makes administration of the fee program more manageable.

5. Retains Testing Authority

In keeping with section 217(d) of the CAA, as amended, nothing in the fees regulations would restrict the Administrator's authority to require testing. The Administrator retains authority to require testing under all provisions of the CAA, including sections 206 and 208.

As section 217(d) makes clear, the fee program in section 217 does not limit EPA's authority to require manufacturer testing as provided in section 208. In the case of the in-use testing program (Recall) and the SEA program, the fees set under section 217 are intended to cover the base program. The base program includes testing which EPA has anticipated (at the time fees are set for a given model year) and which are covered by the fee charges to manufacturers for a given model year.

Section 208(a) provides, in part, that manufacturers shall "* * * perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing)." Testing is considered "reasonably available" if it is included in the base in-use testing program which is covered by fees or if other data are available which EPA has determined are adequate for enforcement purposes. When testing is "not otherwise reasonably available" under parts A and C of title II, EPA would have authority to require manufacturers to test. Thus, testing is considered "not otherwise reasonably available" if the Agency determines that additional testing is necessary beyond the base program that is not covered by fees.

Some examples of testing which manufacturers may be asked to perform, that may not be sufficiently included in the base year costs used for fee setting, are listed below:

1. It is necessary or desirable to increase the size or scope of the recall program beyond that of the applicable base year. This could occur if the non-conformity rate is found to be significantly higher than for the testing conducted during or immediately preceding the base year. It could also occur when new regulated pollutants or technologies not in place during the base year must be evaluated in use.

2. A systematic emission problem, such as a defective part or a deteriorating emission control system, occurs in several classes and the investigation of such occurrences was not sufficiently included in EPA testing during the base year.

For purposes of determining funds "available" from fees for in-use testing during a particular fiscal year, an amount equal to recoverable costs calculated during the appropriate base fiscal year (adjusted appropriately for inflation) is available during the subject fiscal year. For example, if 1991 is the base fiscal year for the 1995 model year fees, recoverable costs calculated during the 1991 fiscal year and adjusted for inflation are considered to be available for EPA programs during the 1995 fiscal year.

The parenthetical "(including fees for testing)" guards against duplicative payment for testing and assures that a manufacturer is not required to test when that testing was anticipated and covered by the fee. The time for determining whether tests are "reasonably available" under section 208 is the time when the need for testing is identified, and not the time when the base testing program was established for setting fees under section 217.

E. Fee Schedule Determination

1. Event Which Triggers EPA Costs

The event which triggers EPA costs related to the MVECP is the certification request. By seeking certification, a manufacturer potentially becomes involved in a number of EPA activities, including certification, fuel economy, SEA, and in-use compliance. The proposed fee structure which is based on criteria determined at the time of certification would recover EPA costs for all the activities associated with the MVECP.

2. Types of Certification Requests

Basically three types of certification requests initiate EPA activities:

(a) Light-duty vehicles/light-duty trucks (LDV/LDT)

(b) Heavy-duty engines/heavy-duty vehicles (HDE/HDV)

(c) Motorcycles (MC)

EPA costs incurred for each of the above certification request types are different. However, within each type, EPA conducts approximately the same level of activity for each certification request.

3. Grouping of Activities by Certification Request Type and Event

The certification request triggers EPA efforts and costs on behalf of manufacturer compliance. The proposed fee schedule would group activities performed and costs incurred in responding to each certification request. Each fee would combine as many activities and associated costs as practical under one fee structure. This method of grouping activities and costs limits both the cost to EPA and the fee to industry by keeping administrative costs to a minimum. Further, the grouping would not impact EPA's process for determining and ensuring compliance in accordance with the CAA and EPCA.

The EPA cost analysis presents the total cost to EPA for each certification request type. The proposed fee for each certification request type includes all EPA costs associated with certification, fuel economy, SEA, and in-use compliance activities where appropriate.

The LDV/LDT certification request type may also include an evaporative emission family certification request. While a separate fee could be charged for each unique evaporative emission family, it is unnecessary to do so. This is due to the fact that the certification requests for evaporative emission families closely parallel requests for engine-system combinations. The single fee which is proposed for LDVs and LDTs includes the cost of both evaporative emission family compliance and engine-system combination compliance. The proposed fee for each unique engine-system combination includes all combinations of evaporative emission families.

Conversely, EPA is proposing a separate fee for HDV evaporative certification requests. HDV evaporative certification requests may include HDEs which were certified previously by a manufacturer different from the one requesting HDV evaporative certification. To ensure that each manufacturer is responsible for an appropriate portion of certification costs, EPA believes it is necessary to separate the activities for the HDE certification request from the HDV evaporative certification request.

4. Division of Costs Within Certification Request Type

The proposed fee for each certification request type includes all costs related to that type. Within each type, not all certification requests result in the same costs being incurred by EPA, as shown by the cost analysis. Specifically, requests for California-only certificates, heavy-duty vehicle evaporative certificates, and unsigned certificates [7] incur only a portion of the costs associated with each certification request type. Therefore, for all certification request types, the proposed fee schedule separates the costs for federal and California-only certificates, [8] and signed and unsigned certificates. Further, for the heavy-duty certification request type, the proposed fee schedule also separates the costs for heavy-duty vehicle evaporative certificates.

The EPA cost analysis shows that within each certification request type the activities and costs may be divided into three parts: Base level certification, final level certification, and SEA and in-use compliance. The base level of certification activities includes initial computer processing, initial review of manufacturers data, scheduling of confirmatory testing, and other activities necessary to initiate the certification process. The final level of certification activities includes all additional certification activities which result in a signed certificate, as well as associated fuel economy activities. SEA includes activities associated with the conduct of an audit, as well as subsequent data storage and analysis. In-use compliance activities include vehicle procurement, maintenance, and testing of vehicles, as well as subsequent data storage and review. Further included in the cost study under SEA and in-use compliance are the related activities associated with certification investigations and ICI review.

The cost analysis values for certification activities have been divided into base certification and final certification levels. This division of costs was obtained by allocating all certification processing, review, and scheduling costs to the base level. All certification testing and fuel economy costs were assigned to the final level.

All requests for certification, regardless of type, receive the base level certification portion of services. In those cases where either a certification request does not receive approval or a manufacturer elects to withdraw the certification request prior to receiving a signed certificate, the proposed fee is for the base level of certification activities only. All signed certificates also receive the final level certification portion of services. All signed federal certificates receive base level, final level, and SEA and in-use compliance services.

As stated above, this division of costs is also applicable to heavy-duty and motorcycle certification request types. Further, HDV evaporative certification requests include HDEs which were certified previously. Therefore, to recover only the incremental costs of the HDV evaporative certification activities, from the HDV manufacturer, EPA is proposing a separate fee for HDV evaporative certification requests since this request type generally involves no associated SEA or in-use compliance activities and costs.

5. Fee Determination

Using the number of certification requests [9] and the total cost for each request type, a fee schedule was determined for each certification request type. The proposed fee schedule is as follows:

Certification request type	No. of requests	Fee	Cost recovered
LDV/LDT:			
Fed Signed	322	$23,731	$7,641,382
Cal-only Signed	174	9,127	1,588,098
Fed Unsigned	67	2,190	146,730
Cal-only Unsigned	14	2,190	30,660
Total	577		9,406,870
HDE/HDV:			
Fed Signed	116	$12,584	$1,459,744
Cal-only Signed	2	2,145	4,290
Fed Unsigned	0	2,145	0
Cal-only Unsigned	0	2,145	0
All Evaporative-only	17	2,145	36,465
Total	135		1,500,499
Motorcycles:			
Fed Signed	80	$840	$67,200
Cal-only Signed	5	840	4,200
Fed Unsigned	0	840	0
Cal-only Unsigned	0	840	0
Total	85		71,400

It should be noted that in the above table, the number of certification requests was used rather than actual certificates signed. This was done to equitably distribute EPA costs over each request. Occasionally, a manufacturer will initiate a certification request, but not receive a signed certificate. The failure to receive a certificate may result from either withdrawa1 of the request or failure to pass the certification process. Where the certification process is not completed, EPA proposes to refund the SEA and in-use compliance portions of

[7] An unsigned certificate means a certification request which does not result in a signed certificate of conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

[8] "California-only certificate" is a certificate of conformity issued by EPA which signifies compliance with only the emission standards established by California. A "federal certificate" is a certificate of conformity issued by EPA which signifies compliance with emission requirements in 40 CFR 86 subpart A.

[9] EPA determined that for heavy-duty and MC certification requests the fee schedule should be based on a three year average (1988–1990) of the number of requests submitted for each. EPA believes that using a three year average for these request types is necessary due to the low annual number of such requests it receives, especially for California-only. For LDVs/LDTs, the fee schedule is based only on MY 1990. This is due to the fact that prior to 1990, the number of such certification requests was significantly lower. EPA believes that the number of requests received in 1990 more accurately reflects the number of requests expected in future years than do the number of requests received in years prior to 1990.

the fee. In this way, EPA is assured that the appropriate costs would be both recovered and fairly distributed over those manufacturers requesting certification regardless of whether an actual certificate is produced.

The allocation of costs for HDVs and HDEs satisfies the requirement of section 217(c) of the CAA, as amended. Section 217(c) provides that "* * * In the case of heavy duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs." By separating the costs for HDVs/HDEs, including heavy-duty vehicle evaporative certification requests, from the costs of LDVs/LDTs and MCs, and determining the fee schedule accordingly, EFA has met the requirement of section 217(a) that only an "appropriate portion" of the reasonable costs associated with certification of HDVs/HDEs be recovered. Thus the fee for HDVs/HDEs certification recovers only the costs incurred by EPA to administer HD compliance activities.

6. Special Cases

Under the proposed fee schedule, two special cases exist which warrant additional clarification.

First, in the same model year, fees would not be collected for certification requests made for an engine-system combination which is not unique. This occurs upon receipt of a certification request which represents a previously certified engine-system combination of the same model year with either a new evaporative emission family or corrections to a previously submitted certification request for running changes or averaging. An engine-system combination which is carried-over to a new model year or carried-across from another engine-system combination is unique and would be subject to a fee.

Second, California-only certification requests would be treated as a unique engine-system combination. As such, a separate fee would be charged. As noted above, the California-only fee would be lower since it does not require EPA to incur SEA and in-use compliance costs.

F. Fee Collection

1. Procedure for Paying Fees

Section 217 of the CAA leaves to EPA's discretion the method through which fees will be collected. EPA's initial review of possible procedures and policies has been guided by three principles: (1) The fee collection process should not have an adverse impact on EPA's motor vehicle compliance program; (2) fees should be collected and deposited in the most cost effective manner possible; and (3) fees should impose little additional paperwork burden on the public. In accordance with these principles, EPA proposes the following procedure for payment of fees:

For each certification request, evidenced by an Engine System Information Form (ESI) or certification application, manufacturers would submit a MVECP Fee Filing Form (filing form) and the appropriate fee in the form of a corporate check, money order, bank draft, or certified check, payable in U.S. dollars, to the order of the U.S. Environmental Protection Agency. The filing form and accompanying fee would be sent to the address designated on the filing form. EPA would not be responsible for fees received in other than the designated location. The ESI or certification application would still be submitted to the Motor Vehicle Emission Laboratory in Ann Arbor, Michigan.

To ensure proper identification and handling, the check and accompanying filing form would indicate the manufacturer's corporate name, the EPA standardized engine family name, and the engine system number that identifies unique engine-system combinations. Further, to expedite the payment procedure, the ESI or certification application would contain a place for each manufacturer to indicate when the filing form and fee were submitted and the amount paid.

This proposal requires that the full fee accompany the filing form. Partial payments or installment payments would not be permitted. If a filing form were submitted with an insufficient remittance, the applicant would be notified and given the opportunity to either submit the difference or withdraw the application and receive a refund of the amount paid. Processing of an ESI or application would not proceed until the Certification Division of EPA received notification from EPA Headquarters Accounting Operations Branch that full payment had been made.

EPA believes that allowing an application to enter EPA's processing system prior to payment of the full fee would result in additional administrative costs to the government, delay Treasury's receipt of funds, and, ultimately, decrease the amount of regulatory costs recovered by the government. Further, if the full fee is required as a prerequisite to processing certification requests, EPA ensures that it would recover the cost of processing from unsuccessful applicants without the need for further collection efforts. It is EPA's view that this is consistent with Congressional intent to impose fees for the cost of processing certification requests, regardless of the ultimate disposition of the request by EPA.

2. Fee Refund

Instances may occur in which an applicant submits a filing form with the appropriate fee, has an engine-system combination undergo the certification process, but then fails to receive a signed certificate. In this situation, the Agency would still have incurred those costs associated with processing the certification request and would be entitled to recover such costs. However, absent a certificate, the engine-system combination would not be subject to the final level of certification, and SEA and in-use compliance. Further, the incremental cost of the final level of certification would not be incurred and should also be refunded. Therefore, where a certificate is not issued, the applicant would be eligible to receive, upon request, a refund of that portion of the fee attributable to the final level of certification, and SEA and in-use compliance. Refunds would be the percentage of the fee paid attributable to the final level of certification, SEA and in-use compliance. The percentage of the fee to be refunded for each certification request type would be as follows:

Certification request type	Percentage of payment to be refunded	
	Federal (percent)	California only (percent)
LDV/LDT	90.8	76.0
HDE/HDV	83.0	0
—Evaporative only	0	0
MC	0	0

Where a refund is shown as 0% in the above table, it is due to the fact that no costs are incurred by EPA for the refundable portion (e.g. SEA and recall) of the fee. Therefore, as detailed in the cost analysis, a refund would not be appropriate.

3. Deposit of Fees: Special and General Treasury Funds

All fees which are collected would be deposited in the United States Treasury. Specifically, in accordance with section 217(b) of the CAA, all fees which are collected for services specified in section 217(a) of the CAA "shall be deposited in a special fund in the United States Treasury." This "special" fund would be used to carry out the programs for which the fee is collected. Fees for services which are imposed solely pursuant to the IOAA, such as fuel economy labeling, would be deposited

in the General Treasury Fund. For the LDV/LDT certification request type, this would mean that 19.6% [10] of each LDV/LDT fee collected would be deposited in the General Treasury Fund. The HD and MC certification request types do not involve fuel economy costs and as such the entire fee for these types would go into the special Treasury fund.

G. Implementation Schedule

It is EPA's intent that the Final Rule on fees be published in October 1991, with the rule being effective and fees being collected beginning late in calendar year 1991 for certification of all vehicle and engine Model Years (MYs) 1993 and beyond. EPA recognizes that the final rule may not become effective until after some manufacturers have submitted certification requests for MY93. Further, some applicants may attempt to avoid payment of the appropriate fee by submitting incomplete applications prior to the time the final rule becomes effective. In these instances, applicants would be billed subsequent to submitting the certification request and would be expected to pay the fee prior to receiving a signed certificate.

Should the Final Rule be delayed until January 1, 1992, or later, manufacturers would not be required to pay a fee for MY93 certificates issued prior to the date the Final Rule becomes effective.

H. Fee Phase-In

EPA proposes to phase in, over two years, recovery of the total cost associated with the MVECP. This phase-in would allow industry a period to plan and budget for the payment of fees. The amount of the total fee recovered in each of the first two years of the fee program would be as follows:

MY93—50%
MY94—100%

I. Waiver or Adjustment of Fees

EPA believes that a liberal waiver policy would violate the very premise underlying section 217 of the CAA: to reimburse the government for the specific regulatory services provided to an applicant. However, EPA recognizes that there may be instances in which an applicant is unable to pay the full fee due to the severe economic hardship such payment would impose. Therefore, EPA is proposing a three part test which, if met, would qualify an applicant for a waiver of a certification fee.

To obtain a waiver, an applicant would need to demonstrate that:

1. The certificate is to be used for sale of vehicles or engines within the U.S.;

2. The worldwide aggregate sales for all vehicles and engines produced by the applicant, including all affiliates (as described in 40 CFR 86.092–14(b)(2)(i)–(iv)), were less than 10,000 units for the most recent MY for which sales data is available preceding the MY year for which certification is requested. If the applicant's first year of operation is the same as the year for which certification is requested, projected aggregate sales would be accepted in lieu of actual sales; and

3. The full fee for a certification request for a MY exceeds 1% of the retail sales value of all vehicles or, where applicable, all engines covered by that certificate. The retail sales value would be based on projected sales of all vehicles under a certificate, including vehicles modified under the modification and test option in 40 CFR 85.1509. The applicant would be expected to demonstrate the basis of its claimed projected sales through various factors, such as prior actual sales and previous waiver requests.

Request for a waiver would be submitted to EPA prior to the certification request. The applicant would have the burden of providing all documentation which would be necessary for EPA to verify that the three requirements were satisfied. As stated by the D.C. Circuit:

> The applicant for waiver must articulate a specific pleading, and adduce concrete support, preferably documentary.[11]

If sufficient documentation is presented and a waiver granted, the fee to be paid by the applicant would be 1% of the retail sales value of the vehicles to be covered by the certification request for the relevant MY. The fee paid would be based on projected sales for the MY for which certification is requested. However, in no case would the fee be less than 25% of the full fee required for the applicable certification request type. EPA believes that the 25% minimum payment requirement is small enough so that it does not impose an undue economic hardship on small manufacturers, but is significant enough to prevent taxpayers from subsidizing an inappropriate portion of the costs incurred by small manufacturers. Similarly, EPA does not believe that a waiver based on 1% of the retail sales value would impose an adverse economic impact on small manufacturers.

For vehicles imported under an ICI certificate, the retail sales value would be based on a vehicle's average retail value listed in the National Automobile Dealer's Association (NADA) price guide. By using the NADA price guide to establish a vehicle's retail sales value, EPA ensures uniformity and fairness in charging fees. Further, it avoids problems associated with abuse, such as falsification of entry documents, in particular, sales receipts. Where the NADA price guide does not provide the retail value of a vehicle, the applicant for waiver must demonstrate, to the satisfaction of the Administrator, the actual market value of the vehicle in the United States at the time of final importation.

Applicants that are granted a waiver and subsequently fail to receive a certificate pursuant to that request would be eligible to receive a partial refund. The refund would be the same percent as that allowed for manufacturers which pay the full fee (see previous Fee Refund section).

EPA recognizes that it would be inequitable to have applicants who pay the full fee subsidize the regulatory costs of those applicants granted a partial waiver. Therefore, such costs would be covered by the government.

J. Fee Updating Procedure

EPA's intent is to charge fees which continue to reasonably reflect the cost of providing certification services. This would require adjustments in the fee schedule which reflect changes in the level of services, as well as operating costs. Therefore, EPA proposes to make adjustments to the fee schedule through two updating procedures.

First, to reflect changes in operating costs, fees would be adjusted automatically every year by the same percentage as the percent change in the Consumer Price Index (CPI). When automatic adjustments are made, based on the CPI, the new fee schedule would be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule.

Second, the fee schedule would be revisited approximately every two years to determine whether it accurately reflects the (1) level of EPA's motor vehicle and engine compliance activities being provided at the time of review, (2) costs of conducting the MVECP, and (3) number of certification requests. Changes would be made in the fee schedule accordingly. When changes are made based on such periodic reviews,

[10] The percentage of LDV/LDT costs attributable to fuel economy is calculated by removing the fuel economy costs shown in the cost study from the total LDV/LDT costs.

[11] *United Gas Pipe Line Co.* v. *Federal Energy Regulatory Comm'n*, 707 F.2d 1507, 1511 (D.C. Cir. 1983).

the changes would be subject to public comment.

IV. Options Considered

EPA has considered, but is not proposing, several alternatives to the proposed fee system. Comments on these alternatives are requested.

A. Alternatives to Certification Request as Basis for Fee

EPA considered several alternatives to charging a fee by certification request. One alternative would be to charge according to the aggregate number of vehicles and engines produced for sale in the U.S. by all manufacturers in a MY. This would involve dividing the total cost of the MVECP by the aggregate number of vehicles and engines produced for sale in the U.S. In other words, the total amount recoverable by EPA would be distributed evenly among the number of vehicles or engines covered by certificates.

A variation of the above alternative would be to divide the cost of the MVECP by certification request type. The resulting amount would then be divided equally among the total number of vehicles and engines produced under each certification request type.

The proposed fee schedule and both alternative fee schedules would recover the government's costs equally. However, EPA's costs are based on certification requests, not units sold under those requests. Thus, a fee per unit sold, whether by overall production or production within certification request type, does not accurately reflect the cost to EPA of providing services associated with the MVECP. In addition, both alternatives would result in large manufacturers paying a disproportionate amount of reimbursable costs, while smaller manufacturers would obtain certification services for a fee far less than the cost incurred by EPA.

A third alternative would be to charge a fee for each sub-event which is a part of the MVECP (e.g. each confirmatory test, data entry request, etc.). This alternative would require maintaining an extensive tracking mechanism throughout the entire process. EPA believes that such a tracking mechanism would increase administrative costs, thereby resulting in increased fees to manufacturers. Further, under this alternative, fees could not be collected until it had been determined which sub-events applied to an applicant. This would result in substantial delays in the MVECP since a signed certificate would not be issued until such a determination was made, a charge was submitted to the applicant, and payment was received by EPA. Therefore, categorizing EPA services at a sub-event level finer than the certification request event is impractical.

B. Higher Fees for Large or Combined Families

EPA considered requiring additional fees for large or combined families under the theory that these might cause EPA to incur greater MVECP costs. However, presently, this would not significantly affect the fee proposed for each certification request type. If warranted, this issue would be addressed in future revisions to the fee schedule.

C. Additional Fees for Extra Certificates for Revised Engine-System Combinations

A separate fee could be charged for each LDV/LDT evaporative emission family certification request. A separate fee would be assessed for each engine-system combination as well as each evaporative emission family.

However, EPA costs for evaporative certification can be grouped together with certification, fuel economy, SEA, and in-use compliance costs within each certification request type. Further, combining the fee minimizes administrative costs, keeps the fee structure simple, and maintains a reasonable method of assessing the fee. Also, separate fees for evaporative certification would increase the administrative costs to EPA and, thus, the total fees assessed to industry.

Similarly, each running change or certificate revision, or an additional certificate issued for a change in the averaging family emission limit (FEL), does not result in significant additional EPA costs. Thus, these costs were combined with the costs for an engine-system combination certification request to minimize EPA's administrative burden.

D. Fee for Signed Certificates Only

EPA considered charging a fee for each signed certificate. This would be a convenient method of assessing the proposed fee. However, significant costs arise from each certification request, regardless of whether it results in a signed certificate. By charging a fee based on signed certificates only, such costs would not be recovered, and those manufacturers receiving a certificate would be subsidizing certification activities of other manufacturers not receiving a certificate.

E. Separate Fee for Fuel Economy

EPA considered charging a separate fee for fuel economy program costs. EPA believes this alternative presents no advantages and would result in higher fees to manufacturers. When a certification request is received by EPA, certification and fuel economy activities are initiated. In the certification process, these activities are intertwined. Bifurcation of these activities would increase EPA's administrative burden and, thereby, increase the fee charged manufacturers.

V. Economic Impact

A. Cost to Industry

The proposed rule would not have a significant impact on the majority of vehicle and engine manufacturers. The cost to industry would be a relatively small value per unit manufactured for most engine-system combinations.

EPA expects to collect about 5 to 15 million dollars annually. This averages out to approximately one dollar per vehicle or engine sold annually. However, for engine-system combinations with low annual sales volume, the cost per unit could be higher. To remove the possibility of serious financial harm on companies producing only low sales volume designs, the proposed regulations include a waiver provision which is based solely on economic hardship. This provision should alleviate concerns about undue economic hardship on small volume manufacturers and ICIs which could result from payment of the full fee required to obtain a certificate.

B. Cost to the Government

The cost to the government would be the extra cost of administering the fee program and occasional revision of these regulations. The administration costs would be recovered as part of the fee.

VI. Public Participation

A. Comments and the Public Docket

EPA requests comments on any aspect of this proposed rulemaking. Persons making comments are especially encouraged to provide suggestions for modification of any aspects of the proposal that they find objectionable. All comments should be directed to the Air Docket, Docket No. A–91–15 (see "**ADDRESSES**").

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly

to the contact person listed above and not to the public docket. If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposal at the public hearing (see "Dates") should, if possible, notify the contact person listed above of such intent at least seven days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date, in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–91–15 (see "**ADDRESSES**").

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

VII. Other Statutory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. The Agency has determined that this regulation is not "major" because it does not meet any of the criteria set forth and defined in section 1(b) of the Order. In fact, this proposal is concerned with recompensation to the government of a portion of the benefits received by private parties.

Also, in accordance with E.O. 12291, the proposed rule was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 2060–0104) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460 or by calling (202) 382–2740.

Public reporting burden for this collection request is estimated to vary from 5 to 30 minutes per response with an average of 24 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (PM–223Y); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). EPA has determined that the regulations proposed today would not have a significant impact on a substantial number of small entities. This regulation would affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

In the case of small manufacturers or ICIs, the proposed regulation includes a waiver provision. In cases of economic hardship, this waiver provision would reduce the fee imposed based on the number of vehicles or engines covered by a certificate of conformity. This inclusion should alleviate the concerns about impacts on small business as expressed in the Regulatory Flexibility Act.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Motor vehicles, Motor vehicle pollution, Gasoline, Diesel, Reporting and recordkeeping requirements, Fees.

Dated: June 6, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR part 86 be amended as set forth below:

PART 86—[AMENDED]

1. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301 of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, 7545 and 7601); and Sec. 9701 of the Independent Offices Appropriations Act (31 U.S.C. 9701).

2. Subpart J is added to part 86 to read as follows:

Subpart J—Fees for the Motor Vehicle and Engine Compliance Program

Sec.

86.901–93 Abbreviations.
86.902–93 Definitions.
86.903–93 Applicability.
86.904–93 Section numbering; construction.
86.905–93 Purpose.
86.906–93 MVEPC certification request types.
86.907–93 Fee amounts.

Sec.
86.908–93 Waivers and refunds.
86.909–93 Payment.
86.910–93 Deficiencies.
86.911–93 Adjustment of fees.

Subpart J—Fees for the Motor Vehicle and Engine Compliance Program

§ 86.901–93 Abbreviations.

The abbreviations in this section apply to this subpart and have the following meanings:

CAFE—Corporate Average Fuel Economy
Cal—California
CPI—Consumer Price Index
ESI—Engine System Information
Fed—Federal
HDE—Heavy-duty engine
HDV—Heavy-duty vehicle
ICI—Independent Commercial Importer
LDV—Light-duty vehicle
LDT—Light-duty truck
MC—Motorcycle
MVEPC—Motor Vehicle and Engine Compliance Program
MY—Model Year
OEM—Original equipment manufacturer

§ 86.902–93 Definitions.

California-only certificate is a certificate of conformity issued by EPA which only signifies compliance with the emission standards established by California.

Certification request means a manufacturer's request for certification evidenced by the submission of an application for certification, ESI data sheet, or ICI Carry-Over data sheet.

Engine-system combination as defined in 40 CFR 86.082–2, means an engine family-exhaust emission control system combination.

Federal certificate is a certificate of conformity issued by EPA which signifies compliance with emission standards in 40 CFR part 86 subpart A.

Fuel economy basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator.

Signed means a certification request which results in a signed certificate of conformity.

Unsigned means a certification request which does not result in a signed certificate of conformity because it is either voluntarily withdrawn by the manufacturer or does not receive approval from the EPA.

§ 86.903–93 Applicability.

This subpart prescribes fees to be charged for the MVECP for 1993 and later model years. The fees charged will apply to all manufacturers' and ICIs' LDVs, LDTs, HDVs, HDEs, and MCs. Nothing in this subpart shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Act, including authority to require manufacturer in-use testing as provided in section 208.

§ 86.904–93 Section numbering; construction.

(a) The MY of initial applicability is indicated by the section number. The two digits following the hyphen designate the first MY for which a section is effective. A section remains effective until superseded.

Example: Section 86.901–93 applies to the 1993 and subsequent MYs until superseded. If section 86.901–96 is promulgated, it would take effect beginning with the 1996 MY; section 86.901–93 would apply to model years 1993 through 1995.

(b) A section reference without a MY suffix refers to the section applicable for the appropriate MY.

§ 86.905–93 Purpose.

The MVECP includes all compliance, enforcement, and related activities performed by EPA which are associated with certification, fuel economy, Selective Enforcement Auditing (SEA), and in-use compliance programs. The fee will recover those compliance, investigation and review costs which the EPA incurs in providing vehicle and engine manufacturers or ICIs with certificates of conformity, fuel economy labels, CAFE calculations, and ICI review necessary to market vehicles in the United States and to meet requirements otherwise imposed by statute.

§ 86.906–93 MVEPC certification request types.

Certification requests are grouped into three types corresponding to the three major divisions of regulated mobile sources: LDVs/LDTs; HDVs/HDEs; and MCs.

§ 86.907–93 Fee amounts.

The fee for each certification request type is:

	MY 1993	MY 1994 (and later)
LDV/LDT:		
Fed Signed	$11,865	$23,731
Cal-only Signed	4,563	9,127
Fed Unsigned	1,095	2,190
Cal-only Unsigned	1,095	2,190
HDE/HDV:		
Fed Signed	$6,292	$12,584
Cal-only Signed	1,072	2,145
Fed Unsigned	1,072	2,145
Cal-only Unsigned	1,072	2,145
All Evaporative-only	1,072	2,145
MCs:		
Fed Signed	420	840
Cal-only Signed	420	840
Fed Unsigned	420	840
Cal-only Unsigned	420	840

§ 86.908–93 Waivers and refunds.

(a) *Request for Waiver.* The Administrator may waive part of any fee imposed by § 86.907 of this subpart.

(1) A waiver will be granted to an applicant if the Administrator determines that:

(i) The certificate is to be used for sale of vehicles or engines within the United States;

(ii) The applicant's worldwide sales for all vehicles and engines produced by the applicant, including all affiliates (as described in 40 CFR 86.092–14(b)(2) (i) through (iv)), was less than 10,000 units for the most recent MY for which sales data is available preceding the MY for which certification is requested; and

(iii) The full fee for a certification request for a MY exceeds 1% of the projected retail sales price of all vehicles covered by that certificate.

(2) The request for waiver must be submitted prior to the payment of any fee and shall include evidence, such as prior actual sales and previous waiver requests, clearly showing that the applicant satisfies the three waiver criteria.

(3) If a waiver is granted, the fee to be paid by the applicant shall be 1% of the projected retail sales price of the vehicles or engines to be covered by the certification request.

(4) Any reduction in the fee which is granted as a result of a waiver shall not exceed 75% of the full fee for the applicable certification request type.

(5)(i) EPA or its designee will analyze each waiver request to determine whether the applicant has met the standards for a waiver and then will notify the applicant of its grant or denial.

(ii) If the request is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to EPA or appeal the denial.

(b) *Request for refund.* The Administrator may refund a specified part of any fee imposed by § 86.907 of this subpart if the applicant fails to obtain a signed certificate, and requests a refund.

(1) That portion of the total fee to be refunded would be as follows:

	Federal (percent)	California-only (percent)
LDV/LDT	90 8	76.0
HDE/HDV	83.0	0
—Evaporative only	0	0
MC	0	0

(2) A request for a waiver or refund of part of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Motor Vehicle and Engine Compliance Program, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

§ 86.909-93 Payment.

(a) All fees required by this section shall be paid by money order, bank draft, certified check, or corporate check, payable in U.S. dollars to the order of the Environmental Protection Agency.

(b) All fees shall be forwarded with the Fee Filing Form to the Environmental Protection Agency to the address designated on the Fee Filing Form.

(c) An application for which a partial waiver of the fee has been requested will not be accepted for processing until the appropriate fee has been determined and the balance waived or, if the waiver has been denied, the proper fee is submitted after notice of denial.

§ 86.910-93 Deficiencies.

(a) Any filing pursuant to § 86.909 of this subpart that is not accompanied by the appropriate filing fee is deficient.

(b) The Administrator will inform any person who submits a deficient filing that:

(1) Such filing will be rejected and the amount paid refunded, unless the appropriate fee is submitted within a specified time;

(2) EPA will not process any filing that is deficient under this section; and

(3) The date of filing will be deemed the date on which EPA receives the appropriate fee.

§ 86.911-93 Adjustments of fees.

(a) The fee schedule will be changed annually by the same percentage as the percent change in the Consumer Price Index (CPI) for all urban consumers.

(b) This annual change will occur within 60 days following release of the final estimates of the annual average for the CPI for all urban consumers by the Department of Labor.

(c) MVECP costs and fees will periodically be reviewed and changes will be made to the schedule as necessary.

(d) When automatic adjustments are made, based on the CPI, the new fee will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule.

(e) When changes are made based on periodic reviews, the changes will be subject to public comment.

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Monday
July 1, 1991

Part X

Department of Transportation

Coast Guard

33 CFR Part 1
Recreational Vessel Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 90 -067]

RIN 2115-AD67

Recreational Vessel Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As required by the Omnibus Budget Reconciliation Act of 1990, this final rule establishes an annual fee for recreational vessels operated on navigable waters of the United States where the Coast Guard has a presence. The fee requires recreational boaters to share in the costs of Coast Guard programs from which they benefit, including search and rescue, boating safety, and aids to navigation, but for which no direct user fee may be charged.

EFFECTIVE DATE: This rule is effective on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division (202) 267-0979.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Carlton Perry, Project Manager, and Christena Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On March 28, 1991, the Coast Guard published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) entitled Recreational Vessel Fees (56 FR 13050). The 45-day comment period ended on May 13, 1991. By that time, the Coast Guard received over 2,000 individual letters commenting on the proposal and an additional 36 petition-type letters bearing almost 3,000 signatures. Another 98 individual letters and 1 petition-type letter bearing 78 signatures were received after the close of the comment period. The individual comments came from the following categories in the numbers noted.

1,906	recreational boating interests or owners.
71	recreational boat outfitter/liveries/ marina/resort.
37	recreational boating associations.
45	recreational boat manufacturer/ dealer/supply/repair.
17	commercial boating interests.
6	national boating interests.
2	federal government agency.
17	U.S. Coast Guard Auxiliarists.
1	U.S. Power Squadron unit.
21	U.S. Congress.
21	state legislator or government agencies.
13	local government agencies.
1	local tourism business association.
9	non-profit organizations.
1	financial institution.
3	recreational boating publications.
2,171	

Over 450 comments requested that public hearings be held. While many comments expressed their opposition to the statute, a large number of comments also supported one or more of the bills now pending in Congress to repeal the legislative requirement for the recreational vessel fees. About half of the requests did not specify a reason for holding a hearing, but others suggested that hearings would clarify or answer questions which they had concerning the NPRM.

The written comments came from almost every state and addressed a wide variety of issues relating to the NPRM. The Coast Guard considered the requests for public hearings, but determined that, although receiving oral presentations at public hearings would increase the number of comments, it would not raise new substantive issues in addition to those in the written comments already received. For the same reasons, the Coast Guard decided that additional time for comment on its proposal would not aid the rulemaking process.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended section 2110 of title 46, United States Code, to require the Secretary of Transportation to establish a fee or charge for recreational vessels and to collect it annually in fiscal years (FY) 1991 through 1995 from the vessel owner or operator. As stated in Conference Report to accompany H.R. 5835, the fee "is intended to require recreational boaters to share in the cost of Coast Guard programs, including search and rescue, boating safety, and aids to navigation, for which no direct user fee may be assessed, but which provides (sic) substantial benefits to recreational boaters." The Act applies to recreational vessels greater than 16 feet in length, operated on the navigable waters of the United States where the Coast Guard has a presence. The amounts collected for fiscal years 1991 through 1995 will be deposited in the U.S. Treasury, ascribed to U.S. Coast Guard activities. The Secretary delegated to the Commandant the authority in 46 U.S.C. 2110 to establish, collect, and enforce the fees and charges required by that section (56 FR 13772; April 4, 1991).

Discussion of Comments and Changes

Applicability

Generally

Section 2110 of Title 46, United States Code, mandates establishment and collection of both direct and indirect user fees. The indirect vessel fee required by section 2110(b) applies only to recreational vessels that are greater than 16 feet in length and which are operated on navigable waters of the United States where the Coast Guard has a presence. The statute also provides that this fee, "does not apply to a public vessel, or a vessel deemed to be a public vessel under section 827 of title 14."

Many comments suggested charging a fee to commercial vessels, public vessels, vessels deemed public vessels, and recreational vessels sixteen feet and less in length. Applying the fee to these vessels is precluded by the statute.

Several comments asked whether documented vessels are subject to the fee. The indirect fee applies to only those vessels documented under 46 U.S.C. chapter 121 that have a recreational endorsement. It is the Coast Guard's position that documented vessels that have a recreational endorsement, even though they also have one or more commercial endorsements, intend to be considered a recreational vessel at least part of the time. In view of the seasonal and occasional usage of many recreational vessels and the lack of any indication in the statute or its legislative history that the fees are to be prorated, the Coast Guard's position is that any use of a recreational vessel on the navigable waters of the United States where the Coast Guard has a presence brings it under the statutory provisions. Therefore, a documented vessel having a recreational endorsement, even if held as one of multiple endorsements, would be subject to the fee. Documented vessels without a recreational endorsement are not subject to the fee.

Several comments asked whether certain state or local government-owned vessels would be subject to this fee. Vessels owned and operated by state and local government agencies or community volunteer fire department and rescue squad units are not recreational vessels under 46 U.S.C. 2101(25), despite their absence in the definition of public vessels in 46 U.S.C.

2101(24). For clarity, state and local government vessels have been added to the definition of public vessel in this rulemaking and vessels operated by volunteer fire departments and rescue squad units have been exempted from the fee.

Several comments suggested charging higher fees for certain length vessels or suggested a graduated fee structure that was based on value of the vessel, displacement, capacity plate data for maximum number of persons, motor horsepower, or actual use of Coast Guard services. Another comment suggested lower fees for sailboats than for powerboats. The statute is very clear concerning the maximum fee amounts which may be assessed on any length vessel and establishes a maximum fee limit of $100 on any vessel 40 feet in length or more. There is no indication in the statute or its legislative history that the fee was to be assessed on any basis other than length or that it was to be graduated by other than the categories contained in the statute. Therefore, the Coast Guard has not adopted any of these comments.

Many comments stated they would not object to the proposed fee if the money went directly to the Coast Guard or would be used for recreational boating services. A number of other comments suggested that half or all of the fee should go directly to the Coast Guard. Both the direct user fees required under 46 U.S.C. 2110(a) and the indirect fees authorized under 46 U.S.C. 2110(b) must be deposited in the general fund of the Treasury. Unless a statute specifically provides otherwise, fees received by a government entity are deposited in the Treasury. The Coast Guard is funded through authorizations and appropriations from the general fund of the Treasury, like most other Federal agencies. The fees deposited in the Treasury are "ascribed to Coast Guard activities" to indicate the source of the funds deposited. Although the specific amount deposited does not directly increase the Coast Guard's current operating funds, the revenues received from those funds are taken into consideration during the budgetary process. This allows the Coast Guard to plan its operations based on current appropriations, and not be dependent on the actual amount of fees collected in a particular fiscal year.

Several comments suggested establishing the fee for a one year trial period or delaying the rule until 1992, until Congress acts on repeal bills, or until 1995 when the economy recovers. Other comments suggested combining two or more years into one fee payment. The statute clearly requires collecting fee payments annually for five years, beginning in fiscal year 1991. The Coast Guard has not adopted any of the above suggestions because they conflict with 46 U.S.C. 2110.

Waters Where the Fees Apply

Hundreds of comments discussed the waters where the fees should or should not apply. The Act requires the fees to apply to vessels operated on the "navigable waters of the United States where the Coast Guard has a presence." In the NPRM, the Coast Guard proposed two separate definitions—"navigable waters of the United States" and "where the Coast Guard has a presence" instead of a single definition for the entire phrase. Although related, by virtue of the statute, the two concepts are distinct and are treated separately in the following paragraphs.

"Navigable waters of the United States"

The NPRM proposed to use the definition of "navigable waters of the United States" in 33 CFR 2.05–25, which includes the territorial seas of the United States; internal waters of the United States subject to tidal influence; and internal waters of the United States not subject to tidal influence, but meeting specific criteria related to substantial interstate or foreign commerce. The first two categories are easily identified and need not be catalogued or listed. The third category of waters, however, are not always easily identified, and a determination of navigability for these waters may involve substantial research and study. Many internal waters have been, or could be, deemed navigable waters of the United States, based only on "historic" usage as a navigable waterway or "future" usage where the waterway could be improved to make it usable in interstate or foreign commerce.

Under 33 CFR subpart 2.10, each Coast Guard district office maintains a list of waters within the district boundaries that the Coast Guard has decided to be navigable waters of the United States for the purposes of its jurisdiction. These lists, however, do not include every body of water within the district boundaries that meets the criteria for navigability. The lists include only those bodies of water that the Coast Guard has been requested or required to review for purposes of making a navigability determination. Therefore, many bodies of water that actually meet the criteria of navigability will not be on a district's list simply because the Coast Guard has not been required to review these waters. It would be a formidable and time-consuming task to examine all potentially navigable waters solely to determine whether they could be made subject to the fees required by 46 U.S.C. 2110(b).

The vast majority of comments objecting to or questioning the applicability of the recreational vessel fees came from individuals who used inland waters that were not subject to tidal influence. Boaters who used waters subject to tidal influence or coastal waters did not question the applicability of the fees. They simply expressed their general opposition to the imposition of any fee on owners and operators of recreational vessels.

Some comments expressed uncertainty as to whether a body of water was a "navigable water of the United States." Many other comments identified specific inland lakes and rivers that, although navigable waters of the United States under the proposed definition, were for all practical purposes isolated from waters subject to tidal influence, either because they are man-made impoundments or because dams or other obstructions preclude through navigation to tidal waters. These comments indicated that, although a body of water was on a district's list as a "navigable water of the United States," it should not be considered "navigable" for the purposes of these fees.

"Where the Coast Guard has a presence"

The other major issue concerning the waters on which the fees would apply was the proposed definition of "where the Coast Guard has a presence." The NPRM defined "where the Coast Guard has a presence" as "within the district boundaries" because Coast Guard district commanders are responsible for providing search and rescue, boating safety, and aids to navigation services within their district boundaries.

Many comments stated that the term "where the Coast Guard has a presence" should serve to limit or further define those "navigable waters of the United States" where the fees apply. Many comments identified inland lakes and rivers where there was no "physical Coast Guard presence," such as search and rescue, aids to navigation, or law enforcement patrols. Other comments stated that the only Coast Guard "presence" was U.S. Coast Guard Auxiliary activities or commercial vessel activities, such as commercial vessel inspection. Because Coast Guard Auxiliarists are volunteers, comments generally did not perceive Coast Guard Auxiliary activities as "Coast Guard

presence." Again, these comments came largely from boaters using inland waters which are not subject to tidal influence.

Comments from coastal areas on this issue generally revolved around the reduction of Coast Guard services to recreational boaters over recent years. These comments particularly complained about the Coast Guard's "non-emergency towing" policy (part of its Maritime Assistance Policy), and the costs of commercial towing services. Comments generally equated a reduction in service to recreational boaters to a decline in, or lack of, "Coast Guard presence" in coastal waters.

Twenty-one comments were received from members of Congress, generally stating the view that the phrase "where the Coast Guard has a presence" was intended to limit applicability of the fees. These views have been carefully considered.

The Coast Guard believes that a definition of "where the Coast Guard has a presence" cannot be limited to those areas where Coast Guard personnel are stationed. Congress required that the fees be established to require recreational boaters to share in the cost of existing Coast Guard programs which provide benefits to recreational boaters. As explained below, the benefits of Coast Guard programs extend far beyond the physical location of its facilities and personnel.

Search and Rescue (SAR): Coast Guard programs work with Federal and State agencies and foreign countries to develop standards and practices that prevent SAR incidents from occurring; provide for mariners to distress a 24-hour available SAR response system, consisting of over 200 shore units, 2,000 small boats, 200 larger patrol boats and cutters, and 32 air stations with over 180 aircraft; and Coast Guard communications and a command and control system are used to coordinate all available SAR resources, including Coast Guard Auxiliary, state and local marine police, commercial providers, volunteer organizations and Good Samaritan boaters to reduce the loss of lives and property.

Recreational Boating Safety (RBS): Coast Guard programs establish minimum standards and guidelines for the manufacture of recreational boats and associated equipment; require the carriage of approved safety equipment on recreational boats; identify and investigate recreational boat defects, test boats for compliance with requirements, and ensure imported boats meet applicable safety standards; develop standards and coordinate with the Coast Guard Auxiliary and the states for effective recreational boater education; provide a toll-free Boating Safety Hotline (800–368–5647); distribute safe boating information; support courtesy marine examinations of recreational boats; coordinate and support consistent state and Federal law enfircement of boating safety laws and regulations; monitor the reporting of recreational boating accidents and analyze the information for boating hazards, their causes and the effects of safety actions and other influences over time; and coordinate and fund state boating safety efforts and state vessel numbering programs.

Aids to Navigation (ATON): Coast Guard programs establish and maintain visual, audible and electronic short range aids to navigation; provide for uniformity and compatibility on non-federal aids to navigation, including permitting and inspecting private aids, and assisting states in administering and operating state navigational aids systems; enhance the usefulness of aids to navigation related to horizontal control of fixed aids and landmarks used to position floating aids; improve aids conspicuousness and positioning precision; publish Light Lists and Local Notices to Mariners; and provide Broadcast Channel Reports on Western Rivers; establish, maintain and operate radionavigation aids to navigation, including Loran-C and Radiobeacon systems; approve bridge permits to provide for acceptable navigational bridge clearances for the efficient passage of vessels; promulgate drawbridge regulations to meet the reasonable needs of marine and land transportation; and approve of bridge clearance and channel lighting and marking to provide for safe vessel passage by day or night.

Changes in the Final Rule

In reviewing the comments on the NPRM, it was clear that the two-definition proposal caused considerable confusion, which was further exacerbated by media reports which discussed sections of the proposal out of context. The comments generally indicated the need for a clear, self-contained description of the waters where the fees would be applicable. Such a description would allow recreational boaters to determine for themselves, in most instances, whether or not the recreational vessel fee applies to vessels operated on a specific body of water.

In the final rule, therefore, the Coast Guard has removed the proposed definitions of "navigable waters of the United States" and "where the Coast Guard has a presence," and has revised the Applicability section by replacing the two-definition proposal with a simpler description of the waters where the fees will apply. The description includes the territorial seas and inland waters subject to tidal influence. These waters were included in the proposal and their status as navigable waters of the United States where the Coast Guard has a presence was not generally contested by the comments. The revised description also sets out, for inland waters which are not subject to tidal influence, a "16-foot boat test" and a short list of specific waters.

The "16-foot boat test" will make the fees applicable on those inland waters, not subject to tidal influence, from which a 16-foot-long powered vessel with a displacement-type hull can navigate to waters that are subject to tidal influence. This test will generally exclude those waters which comments described as landlocked lakes, or where navigation to tidal waters is precluded by a dam, or series of dams, without locks to provide for the passage of vessels. This test will also allow Coast Guard personnel to answer boaters' questions about applicability of the fees on a particular body of water without resorting to the often lengthy research inherent in formal navigability determinations.

The list of specific waters covers those inland water, not subject to tidal influence, which do not meet the "16-foot boat test," but nonetheless, have such a substantial Coast Guard presence that these waters should be subject to the fees. These waters are few in number, and are specifically identified in this rule.

The Coast Guard expects that this revision to the final rule will not only provide a useful test for the recreational boater to determine whether or not the fees apply on a particular body of water, but will also meet concerns that the proposed definition of Coast Guard presence was overbroad. The description in the final rule not only addresses the issue of navigability, it serves as a practical means of establishing those waters where the Coast Guard has a "presence." Boaters need not be familiar with the physical location or extent of Coast Guard activity in a given area to determine whether their vessels are subject to the fees, and the rule excludes waters of the type that prompted comments concerning the lack of Coast Guard presence.

Exemptions

Under 46 U.S.C. 2110(g) the Coast Guard may exempt a person from paying the fee if it is determined to be in the public interest to do so. The Coast Guard proposed a number of exemptions in the NPRM based on existing exemptions from "recreational" vessel numbering or safety equipment carriage requirements in 33 CFR subchapter S. The recreational vessels covered by the proposed exemptions were generally not included in the data base used by the Congressional Budget Office (CBO) in calculating expected receipts from the recreational vessel fees. A large number of comments simply supported or opposed one or more of the proposed exemptions. Others suggested limitations or expansions of the proposed exemptions, or suggested that additional exemptions be added in the final rule.

Exemptions Proposed in the NPRM

Foreign Vessels

The NPRM proposed exempting foreign vessels temporarily operated on navigable waters of the United States. Four comments supported the proposed foreign vessel exemption, one emphasizing the exemption was appropriate "as a courtesy," and 39 comments opposed exempting foreign vessels. Several of the comments had a specific reason for opposing the exemption, citing the predominance of Canadian recreational vessels operating on the U.S. side of the international boundary on Lake Champlain or leasing slips annually at marinas and docks in New York and Vermont. A few comments suggested limiting the exemption to "temporary operation (30, 60 or 90 days)" or "operating under a U.S. Customs crusing permit." The Coast Guard agrees that the term "temporarily," as related to foreign vessels in the NPRM, was not specific and was therefore subject to inconsistent interpretation. The Coast Guard has clarified this in the final rule to "operating less than 30 days in a calendar year." The U.S. Customs cruising permit is issued for one year and is routinely reissued annually upon application. Despite this, the cruising permit is accepted as evidence that a foreign vessel is only temporarily operating in U.S. waters, and is not required to obtain a state number. Therefore, a vessel operating in U.S. waters with a cruising permit has also been exempted.

Ship's Lifeboats

Three comments supported this exemption and another comment suggested limiting the exemption by requiring that an exempted lifeboat not be used for touring. The Coast Guard has decided to remove this exemption in the final rule. A separate exemption for ships' lifeboats is not needed, since such vessels should be treated according to their use as commercial vessels, recreational vessels, foreign vessels, or vessel tenders.

Manually Propelled Boats

Over 200 comments addressed this exemption during the comment period, in addition to the hundreds of similar comments received on this subject before the NPRM was published. Almost all of the comments suggested this exemption be retained. Three comments suggested expanding the exemption to include rafts, and another comment suggested including dories in the exemption. The Coast Guard has retained the "manually propelled" exemption. Rafts have been added to the specific vessels exempted. A dory may be propelled by oars or by sail. If propelled only by oars, it is covered by the exemption for rowboats. If propelled by sail, it will not be exempted, as discussed below.

Sailboards

The NPRM included "sailboards" and other recreational vessels propelled by "sails attached to an unsupported mast" in the "manually propelled" vessel exemption. Five comments supported exempting sailboards and 11 opposed the exemption. One comment also opposed exempting surfboards. Most comments supporting the exemption for unpowered canoes and kayaks also indicated a misunderstanding of this exemption by expressing support for the "sailboat" exemption. Although the language "sailboards" and "sails attached to an unsupported mast" was being interpreted by some comments to exempt sailboats, the exemption proposed in the NPRM was not intended to exempt sailboats generally. It was intended only to clarify that sailboards would not be subject to the fees. Other comments pointed out a defect in the definition of the term "sailboard" in that some sailboats over 16 feet in length use a mast unsupported by guys or stays and would meet the definition of a "sailboard." To alleviate confusion, the Coast Guard has revised the definition of a "sailboard" so that it will not be misinterpreted as including sailboats. Further, defining sailboards as vessels in this rulemaking would affect other rulemakings under development and may also affect state recreational boating safety programs. For the purposes of this rule, "sailboards" have been excepted from the definition of vessel along with "seaplanes."

Racing Vessels

Four comments supported the proposed exemption for vessels used exclusively for racing and 30 comments opposed the exemption. Many of the comments stated that racing vessels are not always used exclusively for racing, but when stopped by a boarding officer, the operator would claim the exemption. Several comments also believed that those vessels actually used exclusively for racing benefited the most from Coast Guard program services and could well afford the vessel fees. One comment specifically cited Coast Guard services for the upcoming America's Cup 1992. The Coast Guard agrees with the concerns raised and has removed from the Final Rule the exemption for vessels used exclusively for racing.

Vessel Tenders

The NPRM proposed two separate exemptions for vessel tenders, one for numbered vessels and one for documented vessels. Four comments generally supported exempting vessel tenders and 12 comments opposed exempting them. Most of the concern expressed in the comments opposing the exemption related to using tenders for more than transportation between the larger vessel and the shore. One comment suggested limiting the exemption to strict usage compliance. There was no discernible concern in the comments whether the tender belonged to a numbered vessel or a documented vessel. The Coast Guard has retained an exemption for vessel tenders, but has combined the two separate exemptions into one consolidated exemption in the Final Rule that limits use of exempted vessel tenders to "direct transportation between that vessel and the shore and for no other purpose."

Exemptions Not Proposed in the NPRM

Unpowered Houseboats

Five comments suggested exempting live-aboard vessels, three of which emphasized that their vessel was their primary residence. Two other comments suggested exempting unpowered barges, houseboats and floating homes. The Coast Guard agrees with the concept that a floating building that must be towed to be moved should not be subject to the fee. However, there are many live-aboard recreational vessels, including some which may be used as primary residences, which should be subject to the fee. Some floating buildings are not a primary residence or are not commercial, but instead are

owned and used by various organizations for their social or organizational meetings. In the final rule, the Coast Guard has exempted unpowered barges, houseboats and floating buildings that are not self-propelled and which are used only while tied to a dock, moored, or at anchor. The Coast Guard has decided not to exempt other vessels which, even though they are used as primary residences, may also easily get underway for recreational operation.

NonProfit Organizations

Eleven comments suggested exempting non-profit youth organizations such as the Boy Scouts of America, including Sea Scouts and Sea Explorers, Girl Scouts of the United States of America and the Young Men's Christian Association of the United States of America because of their primary mission is teaching youths scoutcraft, camping, boating, seamanship, and navigation skills. While unpowered canoes, kayaks and rowboats are already exempted, sailboats and motorboats greater than 16 feet in length are not. One comment explained that the use of these vessels is primarily educational rather than recreational. Another comment advised that their Boy Scout Council owned 30 larger vessels used for training sea explorers, and that the calculated $1,500 in annual fees represented nearly 20% of their entire annual operating budget. The comment also stated that Oregon waives the state registration fees for eleemosynary (supported by charity) organizations. The Coast Guard agrees with the concept that vessels owned or operated exclusively by nonprofit charitable organizations for the purpose of teaching youths boating, seamanship, and navigation skills should not be subject to the fees and has exempted them. Recognizing that other comparable, but less well known, non-profit charitable youth organizations may also own vessels eligible for exemption, the Coast Guard will consider requests by such organizations to exempt their vessels. Two new sections have been added in the final rule stating the procedures by which a non-profit charitable youth organization may apply for this fee exemption and how to obtain fee exemption decals valid through calendar 1995. The Coast Guard believes that using the fee exemption decals will help distinguish those exempt vessels from vessels that are subject to the fee.

Powered Canoes, Kayaks, Rowboats and Jonboats

Ten comments suggested exempting sailing canoes and kayaks because the vessels are the same as exempted unpowered canoes and kayaks and that there are only about 200 in the country. Eight other comments suggested exempting rafts, jonboats or other boats under 20 feet in length, and also jonboats with a 10 HP motor and jonboats with a 25 HP motor. Ten additional comments suggested exempting any canoe, rowboat, or jonboat with less than a 10 HP motor. The Coast Guard agrees with the concept that a canoe, rowboat or jonboat is essentially the same type of vessel, whether propelled by oar/paddle, sail, electric trolling motor or under 10 HP motor. However, adding a sail or motor would significantly extend the vessel's operating range and those vessels should be subject to the fee. The Coast Guard, therefore, has not exempted canoes and kayaks, or other vessels greater than 16 feet in length, when they are propelled by sail or motor.

Miscellaneous.

Numerous comments suggested exempting all U.S. Coast Guard Auxiliary members, all U.S. Power Squadron members, or all active duty, Fleet Reserve, and retired Coast Guard and Navy personnel from the fee. The Coast Guard's position is that exemptions should be related to the purpose for which the recreational vessel is being used, not the status of its owner. The Coast Guard has not accepted these suggestions.

Over 40 comments specifically suggested exempting senior citizens, 65 years of age and older, or requested relief from the fee due to limited retirement income and limited use of their vessels. The comments cited other exemptions or discounts based on age, such as The National Park System Gold Pass and the fact that many states reduce fees for fishing licenses or vessel registration. The Coast Guard acknowledges that some elderly persons, on limited retirement income, may be burdened by these fees. However, not all senior citizens would be so burdened. In addition, by reason of retirement, many senior citizens are able to use their vessels more extensively for recreation than persons working full time. There is no practical way to distinguish between members of this class. In addition, this suggested exemption is not related to the purpose for which the recreational vessel is used. This suggestion has not been accepted.

Several other comments suggested various individual exemptions for marinas; vessels layed-up dockside or stored in boatyards; boats 10 to 25 years old; boats under $500 in value; documented recreational vessels; dealer vessels with state registration number plates; and vessels exempt from the fees at homeport and temporarily using waters subject to the fee for under two weeks. Vessels that are not operated on waters where the fee applies are not subject to the fee and do not require an exemption. Under 46 U.S.C. 2110, there is no temporary time limit, such as a two-week vacation, below which a vessel operated on waters where the fee applies would be exempt from the fee. The statute does not relate fees to frequency of vessel use and it would be difficult, if not impossible, for Coast Guard law enforcement personnel to determine how long a vessel used waters on which the fees were applicable. For the above reasons, the Coast Guard has decided not to create these additional exemptions.

Definitions

Many comments indicated a misunderstanding or specifically requested clarification of the proposed definition of key terms related to the recreational vessel fee.

This rulemaking generally relies on the existing definitions listed in 46 U.S.C. 2101 or subchapter S of title 33 Code of Federal Regulations. The Coast Guard has also revised the proposed definitions or added new definitions in response to comment, as follows:

Documented vessel. The Coast Guard added this definition in the final rule because the rule uses the term "documented vessels" in the exemption for vessel tenders.

Length. The definition of overall length of the vessel is the same definition used in the recreational vessel manufacturer requirements in subchapter S of this chapter. The Coast Guard has retained the definition as proposed for consistency in existing manufacturer, dealer, and state registration documents and certifications referring to a recreational vessel's length.

Operator. The Coast Guard has retained the definition of this term as proposed.

Owner. One comment expressed concern that a lienholder could be held liable to pay the fee or penalties for a vessel without a decal. The term "owner" is consistent with the 46 U.S.C. 2110 provision to collect the fee from the "owner or operator of each recreational vessel," and is not intended to apply to

financial institutions or persons holding a lien or loan for the vessel. It could, however, apply to co-owners of the vessel. The Coast Guard has retained the definition of this term as proposed.

Public vessel. As discussed earlier, the Coast Guard agrees with the suggestions to expand the definition of this term and has revised it to include state and local government agencies.

Recreational vessel. The Coast Guard has retained the definition of this term as proposed.

Sailboard. Because of a misunderstanding of the term sailboard, as proposed, the Coast Guard has revised the definition of sailboard, so that it would not be misinterpreted as including sailboats.

Vessel. One comment suggested that seaplanes be exempted from the fee. The Coast Guard agrees that seaplanes should be excluded from the definition of the term "vessel" and has revised the definition in the Final Rule.

Vessel deemed a public vessel. Many comments suggested extending the definition of this term to include all U.S. Coast Guard Auxiliary Facilities and two comments supported the definition as proposed. One comment suggested that the Coast Guard limit awarding of the Operational Facility decal and wreath to those vessels which had actually operated under orders in the previous year. The Coast Guard does not agree that it should require actual performance under orders in the previous year before awarding the Operational Facility decal and wreath and/or exempting all Auxiliary Operational Facilities from the fee. An Auxiliary vessel may only perform authorized Coast Guard duty after it has been accepted by the Coast Guard as meeting the requirements in Section II of the CG–4951 inspection checklist and has been authorized to bear a Coast Guard Auxiliary Operational Facility decal and wreath. It is making the vessel available for duty under orders, and not the vagaries of operational needs governing actual usage, that is determinative. Since vessels owned by Coast Guard Auxiliarists which are not certified as Auxiliary Operational Facilities are unable to perform authorized Coast Guard duty, which would make them "deemed a public vessel," the Coast Guard has retained this definition as proposed.

Fee amounts. Many comments complained that the fees were too high for vessels used only occasionally, or that the fees for short boating seasons should be less than the fees for locations with a full year boating season. Many comments asked for reduced fees for the remainder of 1991, or suggested lower ranges of graduated or flat fees. The Act does not base the fee amounts on how often a vessel is used each year. Moreover, prorating the fees for the variety of use patterns discussed in the comments would be administratively unmanageable. The Coast Guard, therefore, has retained the fees as proposed in the NPRM, without prorating the fees for infrequent vessel use or boating seasons that are less than a full year.

One comment stated that it is not legal for the Coast Guard to refer to the Congressional Budget Office estimate of fees to be collected or the underlying data base, and that the Coast Guard should determine the fee amounts through an analysis of the costs of the substantial benefits in which Congress intended recreational boaters to share. The Coast Guard used the CBO estimates and data base because they represent a Congressional estimate of the revenues that would be generated under 46 U.S.C. 2110(b) by charging indirect fees. Congress specifically required that these fees be imposed on recreational boaters to share in the costs of programs that provide benefits for which direct fees cannot be charged. Had section 2110(b) required charging direct user fees, the Coast Guard would have complied with the General User Fee statute (31 U.S.C. 9701) and calculated the fees based on the actual cost of providing specific search and resource, aids to navigation and recreational boating safety program services to individuals. The estimated $127 million in revenues from these indirect fees is well below the cost for the above Coast Guard programs. The fees are not meant to recover all costs of Coast Guard programs which benefit recreational boaters. The fees are intended to cause recreational vessel owners and operators only to contribute to the support of these Coast Guard programs. Therefore the Coast Guard has retained the fee amounts as proposed.

Evidence of Fee Payment

This final rule requires a recreational vessel owner to obtain a decal each calendar year (by paying the appropriate fee) and to affix the decal to the vessel. Over 200 comments either supported a calendar year validity for the decal or opposed a fiscal year validity. Several comments suggested the decal be valid for one year from the date of purchase; to coincide with a specific state's renewal cycle; or scheduled to avoid the end of the year postal rush. There is no nationwide consistency among the states for issuing state validation stickers. The Coast Guard has revised the decal validity period to a calendar year basis, as suggested by a majority of the comments that addressed this issue.

Several comments opposed using a new decal for evidence of fee payment and suggested using the existing validation stickers or annual documentation renewal instead. Several other comments suggested issuing only one generic decal; color coding the decal to indicate the year of vaildity; designating the decal differently from the state sticker; or using punch outs on the decal to indicate the month of the year in which the decal expires. The Coast Guard has decided to issue a two decal set for each vessel in evidence of fee payment. The decals are color coded to indicate the calendar year for which they are issued, and to match the four-color scheme rotation currently used by the state registration offices for state validation stickers, under 33 CFR 174.15, beginning with green for calendar year 1991. The fee exemption decals, valid through 1995, will be green since decals that expire in 1995 will also be green.

Placement of Decal on Vessel

Several states advised that their state law prohibited placing any other number or decal/sticker on the forward half of the vessel. Two comments suggested that the decal be placed away from the state issued number, and two other comments suggested allowing documented vessels to have a single decal placed on the windshield instead of on the hull, and allowing documented sailboats to bear a single decal on the lower 18" of the mast on the starboard side. The Coast Guard has retained the location for placement of the decals as proposed. A documented vessel is allowed to place the decals on the vessel's windshield, mast or other visible surface on the forward half of the vessel, since 33 CFR 173.27 allows this placement of vessel numbers.

Manufacturers and dealers using backing plates to display the vessel numbers, as allowed under 33 CFR 173.27, would place the decals on the backing plates. Because the backing plates may be used on different length vessels, the decals should equal or exceed the fee amount for the length of vessel on which the backing plates are being used. For example, $35 decals are valid for vessels at least 20 feet but less than 27 feet long and the lower category of greater than 16 feet but less than 20 feet long; but are not valid for vessels 27 feet long or longer.

Fee Payment Procedures

Over 16 comments suggested using state vessel registration offices or vessel

documentation offices to collect the fee. Several other comments suggested using U.S. Post Offices, marinas, fuel dock operators, marine dealers and financial institutions as fee collectors. The Coast Guard has completed negotiations with the Financial Management Service (FMS), of the Treasury Department and also with the U.S. Postal Service to expand their existing contracts for lockbox and distribution services to collect the prescribed fees and issue the decals in evidence of fee payment. This arrangement is the most expedient, cost effective, and convenient method to implement this final rule.

The Coast Guard estimates the cost of collecting the fee and distributing the decals (including decal printing costs) will be about $2.75 for each decal set using either a Walk-in or Phone-in option and about $0.75 for each decal set for using the Write-in option. Based on an estimated mix of the three options (Walk-in, 10%; Phone-in, 50%; and Write-in, 40%), the Coast Guard calculates the fee collection and distribution costs for 4,100,00 decal sets to be about $8,000,000. This estimated cost could increase to about $11,275,000, or it could decrease to $3,075,000, depending on the actual use of the Write-in option by recreational boaters. These costs are reimbursed to the Coast Guard from the fees collected and will reduce the total amount of fees deposited in the general fund of the Treasury.

The procedures for using the three fee-payment options are provided in section 1.30–20 of this rulemaking. Information on availability of decal request forms for the write-in fee payment option is provided in section 1.30–25 of this Final Rule. Decals will be available for calendar year 1991 through the Phone-in and Write-in options on the date of publication of this Final Rule. Sale of decals through the Walk-in option should begin soon thereafter and will be announced in a separate notice. Sale of decals for each calendar year after 1991 will begin 60 days prior to the beginning of each new calendar year.

Penalties

Over 19 comments complained that a penalty of $5,000 was too high. Two other comments suggested limiting the penalty to $500 for the first three years, and another suggested providing a time period to obtain a decal for a vessel returning from an extended foreign voyage. The maximum penalty of $5,000 is set by 46 U.S.C. 2110 as a ceiling, like many other penalties set by statute, and applies to violations of the direct user fee provisions for commercial and documented vessels, as well as to violations of the indirect fee provisions for recreational vessels. Similarly, 46 U.S.C. 2110 authorizes assessing appropriate additional charges to a vessel owner or operator to recover collection and enforcement costs associated with delinquent payment of the annual fee. These penalties and charges will be administered under the provisions of subpart 1.07 of this chapter. The amount of a penalty would be determined through the civil penalty procedures and would be consistent with the nature of the offense for which it is assessed. This section has been renumbered § 1.30–40 to allow the insertion of two new sections on fee exemptions.

During initial implementation the Coast Guard will allow a "first-time violator," cited for not having a decal, a reasonable period of time to obtain the decals and to furnish evidence of fee payment in order to avoid the assessment and payment of a civil penalty. The availability of decals by mail or phone should eliminate the need for a grace period for vessels returning from a foreign voyage.

Regulatory Evaluation

This rulemaking is major under Executive Order 12291 and significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This rulemaking is expected to generate approximately $127 million from owners of recreational vessels in FY 1991, $135 million in FY 1992, $143 million in FY 1993, $152 million in 1994 and $161 million in FY 1995 for a total economic impact of approximately $718 million on the boating public over the five year period.

Although the rulemaking would exceed a $100 million annual effect on the economy, the fees would apply only to owners or operators of recreational vessels. Owning a boat incurs many associated expenses, such as sales tax, annual property tax, registration fee, insurance, trailer registration and taxes, marina and dock fees, various local water use fees, required safety equipment, navigational aid equipment, the FCC fee, fuel costs and more. The Coast Guard believes that the maximum fee prescribed for each category of vessel length is a minimal increase in the total annual expense of owning and operating a recreational vessel. The fees for recreational vessels may affect a purchaser's decision to buy a slightly smaller boat or less optional equipment, or to buy a used boat instead of a new boat. However, the fees are unlikely, by themselves, to be the deciding factor on whether or not to purchase a recreational vessel at all. Therefore the fees are unlikely to have more than a minor effect on recreational vessel production and sales.

Because the statute mandates establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amounts of the fees within the statutory range for each category of vessel length and exempting vessel owners or operators if it is in the public interest. The usual cost/benefit analysis required for a Regulatory Impact Analysis, however, is not appropriate. The proposed fees are not directly based on the actual costs of the Coast Guard programs that Congress intends the recreational boaters to support, i.e., search and rescue, boating safety, and aids to navigation among others. The Coast Guard costs for search and rescue, aids to navigation and recreational boating safety programs alone far exceed any revenues estimated to be collected in a fiscal year. The total fees estimated to be collected from recreational vessels for one year is estimated to be only $127 million, well below the estimated cost for these programs. The fees required by this rule are not directly related to an individual boater's actual receipt of services provided by these programs. Rather, the fees are related solely to the length of the vessel. The revenues collected from these fees are not added to current Coast Guard appropriations and do not directly affect future appropriations for these programs.

The amendments to 46 U.S.C. 2110 removing long-standing prohibitions against charging fees for services provided to commercial vessels and maritime personnel, as well as the new mandate to establish fees for recreational vessels, are consistent with other provisions of the Omnibus Budget Reconciliation Act designed to increase revenues to further reduce the budget deficit.

As stated in 46 U.S.C. 2110(i), the collection of these fees "does not alter or expand the functions, power, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section." Recreational vessel owners paying the proposed fees, therefore, can expect no increase in the quantity, quality, or variety of services they receive from the Coast Guard.

The proposed fees will have no direct impact on government agencies and any difference in impact on geographical regions is related solely to the location of waters on which the fees apply.

Under 46 U.S.C. 2110(b), the fees can be set at not more than $25 for vessels greater than 16 feet but less than 20 feet; not more than $35 for vessels at least 20 feet but less than 27 feet; not more than $50 for vessels at least 27 feet but less than 40 feet; and not more than $100 for vessels at least 40 feet in length. In the NPRM, the Coast Guard estimated that 80 percent of the total number of applicable recreational vessels over 16 feet in length would be operated on navigable waters of the U.S. where the Coast Guard has a presence. The following table lists the calculated fees collected at the maximum fee amount by category of vessel length.

Vessel length category	Number of vessels	Maximum fee amount	Total fees collected
>16'-<20'	3,471,000	$25	$86,775,000
20'-<27'	1,156,000	$35	40,460,000
<27'-<40'	397,000	$50	19,850,000
40' and over	115,000	$100	11,500,000
Totals	5,139,000		158,585,000
80% of totals	4,111,200		126,868,000
CBO estimate for FY 1991			127,000,000

Thus, establishing the fees uniformly at the maximum amount authorized by the statute would approximate the same amount estimated to be collected in the Congressional Budget Office report.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This rulemaking would apply the fee only to recreational vessels; not to uninspected passenger or other commercial business vessels. The statute excludes uninspected passenger or other commercial business vessels because they are not recreational vessels. Vessels documented by the Coast Guard under 46 U.S.C. chapter 121 are excluded for the same reason, unless the vessel has a "recreational endorsement" on the certificate of documentation. Resorts, boat liveries, and marinas that rent or lease recreational vessels subject to the fee will bear an economic burden of paying a fee for each boat that is operated where the fee applies. Their fee costs will likely be reflected in higher boat rental charges. Some boat rental clients may choose to shift their activities to businesses located on waters where the fee does not apply. Likewise, some tourism linked to boating could shift to communities and businesses on waters the fee does not apply.

Many comments advised of the economically depressed boating industry, including production and sales. Although a boater may choose a boat length just under a length category threshold, the boater is just as likely to choose a less expensive model of a longer length, or choose a used boat over a new boat. Again, a decrease in one business would probably result in an increase in another business. The boat owner does have a myriad of expenses associated with owning the boat, such as sales tax, annual property tax, registration fee, insurance, trailer registration and taxes, marina and dock fees, various local water use fees, required safety equipment, navigational aid equipment, fuel costs and more. Many comments specifically complained about the new $35 FCC fee for a radio operator's license. However, by itself, the recreational vessel fee is not a significant expense related to the total cost of owning a boat.

Because it expects the impact of this rulemaking on small entities to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains reporting and collection of information requirements. The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The subpart number is 33 CFR 1.30 and the corresponding OMB approval number is OMB Control Number 2115–0588.

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A number of states and other comments raised two issues that can be addressed together. Three comments addressed a provision of the Oregon Admissions Act of 1859 (11 Stat. 383) and 3 other comments addressed a provision of the Northwest Territories Ordinance of 1789 (1 Stat. 51n), both of which have similar language directing free and unrestricted use of waterways by the public. To quote from the Northwest Territories Ordinance of 1789,

> The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

The comments suggested by implication that the recreational vessel fee prohibits free and unrestricted use of the waterways. That is not the case, since the recreational vessel fee is not a fee for use of the navigable waters of the United States. As stated in its legislative history, the fee authorized by 46 U.S.C. 2110(b) is "intended to require recreationalboaters." Coast Guard programs provide benefits to recreational boaters to share in the cost of existing Coast Guard programs, including search and rescue, boating safety, and aids to navigation, for which no direct user fee may be assessed, but which provides substantial benefits to recreational boaters." Coast Guard programs provide benefits to recreational boating activities throughout the United States. The fee imposed by Congress ensures that recreational boaters contribute to the support of those programs for which no

direct fees may be assessed. The Coast Guard believes that neither 46 U.S.C. 2110 nor the implementing rules are in conflict with the Oregon Admissions Act of 1859 or the Northwest Territories Ordinance of 1789.

Several states addressed provisions in their state laws that would conflict with a Federal requirement to place the recreational vessel fee (RVF) decal near the state vessel registration number. States with a Coast Guard approved vessel numbering systems prohibit the placement of, "any number that is not issued by an issuing authority for that vessel on its forward half." Several states have extended the provision to prohibit any other decal or sticker as well. At least twenty states require a state validation sticker or decal to be affixed specifically within 2 through 6 inches to the left or right of, or aft of, or immediately preceding or following the vessel state registration number. Four states specified where documented vessels must display the state's validation decals or stickers, i.e., on the transom; each side of the forward half of the vessel; or adjacent to the main steering station on a vertical surface and visible at all times. Although requiring the RVF decal to be placed within six inches of the vessel number will preempt those few states which prohibit the placement of any other decal or sticker on the forward half of the vessel, this is not a substantial encroachment on the authority reserved to the states. The fee may indirectly deter some states from raising their vessel registration fees or excise taxes for recreational vessels; however, the fee provisions in this rulemaking do not preempt or preclude State fees for recreational vessels.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.b.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. This rulemaking is an administrative action, required by the Act to generate revenues, that clearly does not have any environmental impact.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties, Fees.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 1 as follows:

1. Part 1 is amended by adding a new Subpart 1.30—Recreational Vessel Fees to read as follows:

PART 1—GENERAL PROVISIONS

* * * * *

Subpart 1.30—Recreational Vessel Fees

Sec.

1.30–1 Applicability.
1.30–5 Exemptions.
1.30–7 Definitions.
1.30–10 Fee amounts.
1.30–15 Evidence of fee payment.
1.30–20 Fee payment procedures.
1.30–25 Availability of RVF decal request forms.
1.30–30 Vessels owned by non-profit charitable organizations, fee exemption procedures.
1.30–35 Fee exemption decals request procedures.
1.30–40 Penalties.

Authority: 46 U.S.C. 2110; 49 CFR 1.46.

§ 1.30–1 Applicability.

(a) This subpart establishes annual fees for recreational vessels, effective in calendar years 1991, 1992, 1993, 1994 and 1995.

(b) The fees established under this subpart do not apply to recreational vessels 16 feet in length and under, public vessels, and vessels deemed public vessels under 14 U.S.C. 827.

(c) The fees established under this subpart apply to recreational vessels operated on:

(1) Territorial Seas of the United States;

(2) Internal navigable waters of the United States subject to tidal influence;

(3) Internal navigable waters of the United States, not subject to tidal influence, from which, during most of the boating season, a 16 foot long powered vessel with a displacement-type hull can navigate to waters subject to tidal influence; and

(4) Waters listed in paragraph (d) of this section.

(d) The fees established under this subpart also apply to the following waters.

(1) Colorado River, between Parker Dam and Davis Dam, including Lake Havasu and the Parker Strip (AZ, CA);

(2) Lake of the Woods (MN);

(3) Lake Roosevelt (WA); and

(4) Lake Tahoe (CA, NV).

§ 1.30–5 Exemptions.

The owners or operators of the following recreational vessels are exempt from the vessel fees required by this subpart:

(a) Foreign vessels temporarily operated on navigable waters of the United States less than 30 days in a calendar year, or under a current U.S. Customs Cruising Permit;

(b) Rowboats, canoes, kayaks, racing shells, rowing sculls, racing kayaks, jonboats, rafts and other comparable recreational vessels propelled solely by oars, paddles, or poles;

(c) Unpowered barges, houseboats, or floating buildings that are not self-propelled and are normally used only while tied to a dock, moored or at anchor;

(d) Vessel tenders or lifeboats for numbered or documented vessles which are used only for direct transportation between that vessel and the shore and for no other purpose;

(e) Vessels owned or operated by volunteer fire departments, rescue squad units, or similar organizations, and used for public safety purposes;

(f) Vessels owned or operated exclusively by the Boy Scouts of America, Sea Explorer Association, Girl Scouts of the United States of America, or Young Men's Christian Association of the United States of America, and used primarily for training youths in boating, seamanship, and navigation skills.

§ 1.30–7 Definitions.

Documented vessel means a vessel documented under 46 U.S.C. chapter 121.

Length means the straight line horizontal measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured from end to end over the deck excluding sheer, and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

Operator means the person who is in control or in charge of a vessel while it is in use.

Owner means a person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles the person to such possession.

Public vessel means a vessel that is owned, or demise chartered, and operated by the United States Government or a government of a foreign country, or state or local government.

Racing shell, rowing scull, and racing kayak means a manually propelled vessel that is recognized by a national or international racing association for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry

any equipment not solely for competitive racing.

Recreation vessel means a vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure.

Sailboard means a sail propelled watercraft resembling a surfboard on which the operator must manually support the mast in order to maneuver the watercraft.

Use means operate, navigate, or employ.

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except sailboards and seaplanes.

Vessel tender A vessel equipped with propulsion machinery of less than 10 horsepower that:

(a) Is owned by the owner of:

(1) A documented vessel; or

(2) A vessel for which a valid certificate of number has been issued and displays the number of that numbered vessel followed by the suffix "1" in the manner prescribed in § 173.27 (Example: DC 5678 EF 1 or DC–5678–EF–1); and

(b) Is used for direct transportation between that vessel and the shore and for no other purpose.

Vessel deemed a public vessel means a vessel accepted by the Coast Guard, under the provisions in part 5 of this chapter, as an Auxiliary Operational Facility and bearing a current Auxiliary Operational Facility decal and wreath.

§ 1.30–10 Fee amounts.

The recreational vessel fees for the categories of vessel length are as follows:

(a) Vessels greater than 16 feet in length but less than 20 feet—$25;

(b) Vessels at least 20 feet in length but less than 27 feet—$35;

(c) Vessels at least 27 feet in length but less than 40 feet—$50; and

(d) Vessels at least 40 feet in length—$100.

§ 1.30–15 Evidence of fee payment.

(a) The owner or operator of each vessel subject to this subpart must pay the prescribed fee annually, as provided for in § 1.30–20 of this subpart, to obtain a decal set in evidence of fee payment.

(b) The decals must be securely attached to each side of the forward half of the vessel within 6 inches of either the location of a vessel number issued under part 173 or 174 of this chapter, or, for vessels not issued a vessel number, where the number would be located, if issued.

(c) The decals are valid during the calendar year for which they are issued.

§ 1.30–20 Fee payment procedures.

The owner or operator of each vessel subject to this fee must pay the prescribed fee annually by one of the following options:

(a) *Write-in.* Payment may be made by check, money order, or Visa or Master Card credit card when submitting a completed decal request form, providing necessary information on the number and type(s) of decals requested, and a mailing address, to U.S. RVF, P.O. Box 740169, Atlanta, Georgia 30321–0169. Credit card payments must also include the type of credit card and accounting information indicated on the decal request form. The distributor will mail the decal(s) on receiving payment or after verifying the credit card account.

(b) *Phone-in.* Payment may be made by Visa or Master Card credit card. Owners or operators may call the recreational vessel fee (RVF) toll-free number at 800–848–2100, and provide information on the number and type(s) of decals, credit card account number and mailing address. The distributor will mail the decal(s) after verifying the credit card account.

(c) *Walk-in.* Payment may be made by cash, check, or money order at any participating retail outlet. The retail outlet will issue the requested decal(s) upon payment of the fee amount.

§ 1.30–25 Availability of RVF decal request forms.

The decal request forms needed for the write-in payment method, described in § 1.30–20 of this subpart, are available at all manned Coast Guard shore units, except light and loran stations, or may be obtained by calling the toll free Boating Safety Hotline at 800–368–5647.

§ 1.30–30 Vessels owned by non-profit charitable organizations, fee exemption procedures.

A non-profit charitable organization may request an exemption for its vessels that are used for teaching youths boating, seamanship, and navigation skills by:

(a) Submitting a written request to the U.S. Coast Guard Auxiliary, Boating, and Consumer Affairs Division, 2100 Second Street SW., Washington, DC 20593–0001;

(b) Providing evidence of its status as a non-profit, charitable organization; and

(c) Certifying that the vessels are owned or operated exclusively by the organization and are primarily used for teaching youths boating, seamanship, and navigation skills.

§ 1.30–35 Fee exemption decals request procedures.

An organization listed in § 1.30–5(f) or obtaining an exemption under § 1.30–30 may obtain fee exemption decals for its vessels by:

(a) Submitting a written request to the U.S. Coast Guard Auxiliary, Boating, and Consumer Affairs Division, 2100 Second Street SW., Washington, DC 20593–0001; and

(b) Providing the following information:

(1) For documented vessels: the official name of each vessel, name(s) of owner(s), types of endorsements, and official number on the Coast Guard certificate of documentation;

(2) For registered vessels: a copy of each vessel's certificate of registration, showing the vessel's owner and vessel number;

(3) For undocumented and unnumbered vessels: a copy of each vessel's certificate of title or statement of origin, showing the vessel's owner and hull identification number.

§ 1.30–40 Penalties.

(a) A person who violates this subpart by failing to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(b) The Coast Guard may assess additional charges to a vessel owner or operator to recover collection and enforcement costs associated with delinquent payments of the annual fee.

(c) Penalties and charges will be assessed and collected under the provisions of subpart 1.07 of this chapter.

Dated: June 24, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 91–15512 Filed 6–28–91; 8:45 am]

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federal register

Monday
July 1, 1991

Part XI

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3400

Special Research Grants Program; Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3400

Special Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Special Research Grants Program, which prescribe the procedures to be followed annually in the solicitation of special research grant proposals, the evaluation of such proposals, and the award of special research grants under this program. This proposed amendment would change the regulations by providing CSRS the option of selecting different proposal evaluation criteria for specific program areas, by providing for an increased avenue for publication of requests for grant proposals, by providing for the grant document to state the conditions under which a grantee may approve changes to an approved budget, by indicating that the format for research grant proposals applies unless otherwise stated in the program solicitation, by adding references to applicable regulations pertaining to lobbying, debarment and suspension (nonprocurement), debt collection, and drug-free workplace, and by making a few additional changes.

DATES: Comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before July 31, 1991.

ADDRESSES: Comments should be sent to Terry J. Pacovsky, Director, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 322, Aerospace Center, Washington, DC 20250–2200.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The Office of Management and Budget has previously approved the information collection requirements contained in the current regulations at 7 CFR part 3400 under the provisions of 44 U.S.C. chapter 35 and OMB Document No. 0524–0022 has been assigned. The information collection requirements of the proposed rule at 7 CFR part 3400 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980. Public reporting burden for the information collections contained in these regulations are estimated to vary from ½ hour to 3 hours per response, 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 Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Document No. 0524–0022), Washington, DC 20503.

Classification

This rule has been reviewed under Executive Order 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96–534 (5 U.S.C. 601 *et. seq.*).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended. (42 U.S.C. 4321 *et seq.*)

Catalog of Federal Domestic Assistance

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 2(c)(1)(A) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(c)(1)(A)), the Secretary of Agriculture is authorized to make special grants for research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. 7 CFR 2.107(a)(3) delegates this authority to the Administrator of CSRS. In the past, a Notice was published in the **Federal Register** annually announcing the availability of funds for special research grants and soliciting proposals. In addition, the Notice set forth the procedures and criteria for the evaluation of proposals and procedures and conditions relating to the award and administration of these grants. On February 8, 1985, the Department published a Final Rule in the **Federal Register** (50 FR 5498–5504), which established and codified such procedures, criteria, and conditions to be employed annually. It standardized the rules applicable to the administration of the Special Research Grants Program and eliminated the need to republish them annually.

On December 8, 1988, the Department published a Final Rule, Amendment in the **Federal Register** (53 FR 49640–49642), which amended and codified those regulations to facilitate the evaluation of applications and the award of project grants by modifying the weight factors associated with the selection criteria and by making a few additional changes. The administrative regulations governing grant programs authorized by section 2(c)(1)(A) are proposed to be changed as follows:

Sections 3400.1(a) and 3400.3(a)

CSRS proposes to revise these sections to reflect changes made to 7 U.S.C. 450i(c)(1)(A) by the Food, Agriculture, Conservation, and Trade Act of 1990.

Sections 3400.1(a) and 3400.4(a)

CSRS proposes to revise these sections to indicate the various types of publications, in addition to the Federal Register, in which requests for proposals may be announced by CSRS to the public. This revision is considered necessary in order to be consistent with

the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015.

Section 3400.4(c)

CSRS proposes to add "Unless otherwise stated in the program solicitation, the following applies:" to show that research grant proposals submitted by eligible applicants should follow the format for research grant proposals indicated in paragraphs (c)(1)–(c)(16) of § 3400.4 unless otherwise stated in the program solicitation.

Section 3400.4(c)(3)

CSRS proposes to add the word "enumerated" to assure that multiple objectives are listed separately in order to enhance the clarity of proposals.

Section 3400.4(c)(13)(iii)

CSRS proposes to add, as the last sentence, that the Grant Application Kit contains suitable forms for certifying compliance with the Animal Welfare Act of 1966, as amended, (7 U.S.C. 2131 *et seq.*) in the event that a project involving the use of a laboratory animal is recommended for award. This action will ensure uniformity in the use of a certification statement by all who are required to submit a certificate of compliance as well as inform prospective applicants of the existence of such a form.

Section 3400.4(c)(14)

CSRS proposes to add, as the last sentence of this section, that the Grant Application Kit contains a suitable form for listing current and pending support. This action will ensure uniformity in the information provided to CSRS in all grant proposals as well as inform prospective applicants of the existence of such a form.

Section 3400.4(c)(16)

CSRS proposes to revise this section to inform prospective applicants that forms recommended for use in providing organizational management information to CSRS will be provided to them by CSRS when required. This action will remove the requirement placed upon the applicant in requesting the forms from CSRS.

Section 3400.5

CSRS proposes to amend this section, in order to provide for the use of different evaluation criteria when CSRS determines that such is necessary for the proper evaluation of proposals in a specific program area. Such determination would be made prior to the release of the annual program announcement and any changes to the evaluation criteria would be specified therein.

Sections 3400.7(b)(4), 3400.7(c), and 3400.7(d)

CSRS proposes to change these sections to allow CSRS to indicate in each particular grant award document the conditions under which the approved budget or project period may be changed or actual performance may be transferred in order to accommodate the field of potential grantees expanded by the Food, Agriculture, Conservation, and Trade Act of 1990. For those potential grantees within the scope of the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, these changes are consistent with the deviation authorities and the Federal Demonstration Project. These changes are included for other potential grantees by the fact that the USDA Uniform Federal Assistance Regulations are not applicable to these other potential grantees.

Section 3400.8

CSRS proposes to add to this section the USDA implementing regulations that apply to Governmentwide Debarment and Suspension (Nonprocurement) and to the Governmentwide Requirement for a Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, the USDA implementing regulations that apply to New Restrictions on Lobbying, 7 CFR part 3018, and the USDA implementing regulation regarding OMB Circular No. A–129, relating to debt collection, 7 CFR part 3. This action will inform the prospective applicants of the specific legal requirements in these areas by listing the regulations which apply to this program.

Section 3400.15

Consistent with the proposal to amend § 3400.5(a), we propose amending § 3400.15 to state that when different evaluation criteria are selected for use in a specific program area, the form set-out in § 3400.15 will not be used.

Throughout the proposed amendment, CSRS has made minor changes to reflect changes in the eligible applicants under 7 U.S.C. 450i(c)(1)(A) made by the Food, Agriculture, Conservation, and Trade Act of 1990.

Throughout the proposed amendment, CSRS has changed references to the Secretary to refer to the Administrator of CSRS to reflect the delegation of authority in 7 CFR 2.107(a)(3).

We propose to publish title 7, chapter XXXIV, part 3400, as amended at 50 FR 5498–5504, February 8, 1985, and 53 FR 49640–49642, December 8, 1988, together with the proposed changes, in its entirety. This action will allow the regulations and amendments to appear in one document for easy access and reference by the public and CSRS.

List of Subjects in 7 CFR Part 3400

Grant programs—agriculture, Grants administration. For the reasons set out in the preamble, title 7, chapter XXXIV, part 3400 of the Code of Federal Regulations is proposed to be revised to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3400—SPECIAL RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.

3400.1 Applicability of regulations.
3400.2 Definitions.
3400.3 Eligibility requirements.
3400.4 How to apply for a grant.
3400.5 Evaluation and disposition of applications.
3400.6 Grant awards.
3400.7 Use of funds; changes.
3400.8 Other Federal statutes and regulations that apply.
3400.9 Other conditions.

Subpart B—Scientific Peer Review of Research Grant Applications

3400.10 Establishment and operation of peer review groups.
3400.11 Composition of peer review groups.
3400.12 Conflicts of interest.
3400.13 Availability of information.
3400.14 Proposal review.
3400.15 Review criteria.

Authority: 7 U.S.C. 450i(h).

Subpart A—General

§ 3400.1 Applicability of regulations.

(a) The regulations of this part apply to special research grants awarded under the authority of section 2(c)(1)(A) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(c)(1)(A)), to facilitate or expand promising breakthroughs in areas of food and agricultural sciences of importance to the Nation. Each year the Administrator of CSRS shall determine and announce, through publication of a Notice in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded by the

Department of Agriculture under any other authority.

§ 3400.2 Definitions.

As used in this part:

(a) *Administrator* means the Administrator of the Cooperative State Research Service (CSRS) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the grant application and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(e) *Research project grant* means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Administrator for conducting the research project as outlined in an approved grant application.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of grant applications in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training and experience in particular scientific or technical fields to render special expert advice, whose written evaluations of grant applications are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of grant applications in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

§ 3400.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any State agricultural experiment station, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals, shall be eligible to apply for and receive a special research project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including in particular any prior performance under grants and contracts from the Federal Government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3400.4 How to apply for a grant.

(a) A request for proposals will be prepared and announced through publications such as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare special research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Grant Application Kit.* A Grant Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following applies:

(1) *Grant Application.* All research grant proposals submitted by eligible applicants should contain a Grant Application form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures or methodology to be applied to the proposed research plan should be explicitly stated. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;
(iv) Means by which data will be analyzed or interpreted;
(v) Pitfalls which might be encountered; and
(vi) Limitations to proposed procedures.

(5) *Justification.* This section should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem.

(ii) The importance of starting the work during the current fiscal year, and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations themselves should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and as yet unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, which are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be fully explained, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be fully explained and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which proposer is to receive any resulting grant award, since only one eligible applicant, as provided in § 3400.3 of this part, may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be clearly identified. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of all key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publications listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Grant Applicant Kit identified under § 3400.4(b) of this part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. No funds will be awarded for the renovation or refurbishment of research spaces; purchases or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. All research project grants awarded under this part shall be issued without regard to matching funds or cost sharing.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of special research grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification of compliance.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Guidance is contained in Pub. L. 93–348, as implemented by the Department of Health and Human Services' policies under 45 CFR part 46. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Special Research Grants Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1,2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Grant Application Kit, identified above in § 3400.4(b), contains forms which are suitable for such certification.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. The Grant Application Kit, identified above in § 3400.4(b), contains a form which is suitable for listing current and pending support.

(15) Additions to project description. Each project description is expected by the Administrator, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3400.4(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Grant Application and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a research project grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3400.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are uniquely qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, and/or others who are recognized specialists in the research program areas covered by the applications received and whose general roles are defined in § 3400.2(j) and §3400.2(k). Specific evaluations will be based upon the criteria established in Subpart B, § 3400.15, unless CSRS determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Administrator can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will:

(1) Approve support using currently available funds,

(2) Defer support due to lack of funds or a need for further evaluations, or

(3) Disapprove support for the proposed project in whole or in part.

With respect to approved projects, the Administrator will determine the project period (subject to extension as provided in § 3400.7(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3400.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Administrator as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's "Uniform Federal Assistance Regulations" (part 3015 of this title).

(b) *Grant award document and notice of grant award*—(1) *Grant award document.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded a special research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee which are not included in the grant award document.

(c) *Categories of grant instruments.* The major categories of grant instruments shall be as follows:

(1) *Standard grant.* This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support

at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant.* This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal Government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the food and agricultural sciences, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document will normally be awarded for an initial one-year period and any subsequent continuation research project grants will also be awarded in one-year increments. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; a Grant Application; a proposed budget for the ensuing period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years will usually be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original special research grant application, additional evaluations of this type are not generally required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally viewed and approved), additional reviews may be required prior to approving continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature does not normally require additional peer review.

(d) *Obligation of the Federal Government.* Neither the approval of any application nor the award of any research project grant shall legally commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3400.7 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Administrator for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of a grant award.

(c) *Changes in project period.* The project period determined pursuant to s3400.5(b) may be extended by the Administrator without additional financial support, for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed five (5) years (the limitation established by statute) and shall be further conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3400.8 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR part 1.1—USDA implementation of Freedom of Information Act

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection

7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3400.9 Other conditions.

The Administrator may, with respect to any research project grant or to any class of awards, impose additional conditions prior to or at the time of any award when, in the Administrator's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Grant Applications

§ 3400.10 Establishment and operation of peer review groups.

Subject to § 3400.5, the Administrator will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3400.14.

§ 3400.11 Composition of peer review groups.

Peer review group members will be selected based upon their training and experience in relevant scientific or technical fields, taking into account the following factors:

(a) The level of formal scientific or technical education by the individual;

(b) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(c) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(d) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(e) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(f) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3400.12 Conflicts of interest.

Members of peer review groups covered by this part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (Part O of this title) and Executive Order 11222, as amended.

§ 3400.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (part 1 of this title).

§ 3400.14 Proposal review.

(a) All research grant applications will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals which do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be carefully reviewed by the Administrator, qualified officers or employees of the Department, the respective peer review group, and *ad hoc* reviewers, as required. Written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and indepth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) No awarding official will make a research project grant based upon an application covered by this part unless the application has been reviewed by a peer review group and/or *ad hoc* reviewers in accordance with the provisions of this part and said reviewers have made recommendations concerning the scientific merit of such application.

(d) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3400.15 Review criteria.

(a) In carrying out its review under § 3400.14, the peer review group will use the following form upon which the evaluation criteria to be used are enumerated, unless pursuant to § 3400.5(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program.

Peer Panel Scoring Form
Proposal Identification No. _____
Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines?_____ Yes_____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal		10		
2. Scientific and technical quality of the approach		10		

	Score 1-10	Weight factor	Score X weight factor	Comments
3. Relevance and importance of proposed research to solution of specific areas of inquiry		6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment		5		

Score _____

Summary Comments _____

(b) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Done at Washington, DC, this 25th day of June 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-15593 Filed 6-28-91; 8:45 am]

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federal register

Monday
July 1, 1991

Part XII

Environmental Protection Agency

40 CFR Parts 141, 142, and 143
National Primary Drinking Water Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141, 142 and 143

RIN 2040-AA55

[FRL-3960-1]

Drinking Water; National Primary Drinking Water Regulations; Monitoring for Volatile Organic Chemicals; MCLGs and MCLs for Aldicarb, Aldicarb Sulfoxide, Aldicarb Sulfone, Pentachlorophenol, and Barium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA is revising monitoring requirements for eight volatile organic contaminants (VOCs) originally promulgated July 8, 1987. This change synchronizes requirements for these eight VOCs with monitoring requirements for VOCs promulgated on January 30, 1991 (56 FR 3526). EPA is also promulgating the MCLGs and MCLs for aldicarb, aldicarb sulfoxide, aldicarb sulfone, pentachlorophenol, and barium. This Notice also corrects errors and clarifies certain issues in the final rule promulgating 33 National Primary Drinking Water Regulations promulgated January 30, 1991 (56 FR 3526).

EFFECTIVE DATE: The amendments to § 141.6, paragraph (c) of the table in § 141.12, and § 141.62(b)(1) are effective July 1, 1991. The amendments to §§ 141.11(b), 141.23, 141.24, 142.57, 143.4(b)(12) and (b)(13), are effective July 30, 1992. The revisions to § 141.32(e)(16), (25) through (27) and (46); § 141.50(a)(15), (b)(4), (b)(5) and (b)(6); § 141.51(b)(3); § 141.61(c)(2), (c)3, (c)(4) and (c)(16); § 141.62(b)(3) are effective January 1, 1993.

The barium information collection requirements of § 141.23 are effective January 1, 1993, if the information Collection Request is cleared by the Office of Management and Budget (OMB). If not, EPA will publish a document delaying the effective date of the barium information collection requirements. Otherwise, the requirements will be effective when OMB clears the request at which time a document will be published in the **Federal Register** establishing the effective date.

In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purposes of judicial review at 1 p.m., Eastern time on July 15, 1991.

ADDRESSES: A copy of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency (EPA), Drinking Water Docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 202–382–3027 between 9 a.m. and 3:30 p.m. Any document referenced by an MRID number is available by contacting Susan Laurence, Freedom of Information Office, Office of Pesticide Programs, at 703–557–4454.

Copies of health criteria, analytical methods, and regulatory impact analysis documents are available for a fee from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–336–4700, local: 703–487–4650.

FOR FURTHER INFORMATION, CONTACT: Al Havinga, Standards Division, Office of Ground Water and Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202/382–5555. General information may also be obtained from the EPA Drinking Water Hotline. The toll-free number is 800/426–4791, Alaska and local: 202/382–5533.

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I. Statutory Authority

The Safe Drinking Water Act ("SDWA" or "the Act"), as amended in 1986 (Pub. L. 99–339, 100 Stat. 642), requires EPA to publish "maximum contaminant level goals" (MCLGs) for contaminants which, in the judgment of the Administrator, "may have any adverse effect on the health of persons and which [are] known or anticipated to occur in public water systems" (section 1412(b)(3)(A)). MCLGs are to be set at a level at which "no known or anticipated adverse effects on the health of persons occur and which [allow] an adequate margin of safety" (see section 1412(b)(4)).

At the same time EPA publishes an MCLG, which is a non-enforceable health goal, it must also promulgate a National Primary Drinking Water Regulation (NPDWR) which includes either (1) a maximum contaminant level (MCL), or (2) a required treatment technique (section 1401(1), 1412(a)(3), and 1412(b)(7)(A)). A treatment technique may be set only if it is not "economically or technologically feasible" to ascertain the level of a contaminant (sections 1401(1) and 1412(b)(7)(A)). An MCL must be set as close to the MCLG as feasible (section 1412(b)(4)). Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds are available, after examination for efficacy under field conditions and not solely under laboratory conditions (taking cost into consideration)" (section 1412(b)(5)). NPDWRs also include monitoring, analytical and quality assurance requirements, specifically, "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels * * *" (section 1401(1)(D)). Section 1445 of SDWA also authorizes EPA to promulgate monitoring requirements.

II. Regulatory Background

On July 8, 1987 EPA promulgated NPDWRs for eight volatile organic contaminants (VOC rule, 52 FR 25690). On May 22, 1989 EPA proposed VOC monitoring requirements for 10 contaminants and MCLGs and MCLs for 38 contaminants including aldicarb, aldicarb sulfoxide, aldicarb sulfone, pentachlorophenol, and barium. The MCLGs and MCLs for these five chemicals were reproposed on January 30, 1991 (56 FR 3600) at different levels due to information which was received and/or analyzed by the Agency subsequent to the May 22, 1989 proposal.

The monitoring requirements outlined in today's rule for the most part mirror (with several exceptions, as noted below) the VOC requirements published

on January 30, 1991 for the 10 VOCs in the Phase II rule. EPA stated in the reproposal that changes to the proposal incorporated in the final rule would apply to monitoring requirements for both the 10 VOCs promulgated January 30, 1991 and the 8 VOCs included in today's rule. This ensures the monitoring requirements for the 18 VOCs (the 8 Phase I VOCs and the 10 Phase II VOCs) remain identical. Consequently, the changes published today will also apply to the monitoring requirements for the 10 Phase II VOCs published January 30, 1991.

III. Explanation of Today's Action

A. VOC Monitoring Requirements

1. Standardized Monitoring Framework

In response to comments received on the May 22, 1989 Phase II proposed rule, EPA developed a standarized monitoring framework to address the issues of complexity, coordination between various regulations, and synchonization of monitoring schedules. EPA stated that this framework would serve as a guide for future source-related monitoring requirements adopted by the Agency.

Comments submitted to EPA during the comment period revealed support for the standardized monitoring framework. Within this standardized framework each State must designate approximately one-third of the systems to conduct initial monitoring during each year of the initial compliance period (i.e. one third in 1993, one-third in 1994 and one third in 1995). This arrangement is intended to level the anticipated workload.

Most commenters believed that the framework does achieve the goals of synchronization of monitoring schedules. Most comments recived by the Agency addressed specific issues related to changes in the VOC monitoring requirements and how the 1987 VOC requirements will be coordinated with the Phase II requirements promulgated January 30, 1991.

The monitoring requirements outlined in today's rule for the most part mirror (with several exceptions as discussed below) the VOC requirements promulgated in January 1991 for 10 VOCs. EPA stated in the proposal for today's rule that if comments and information received during the comment period result in changes to this proposal, EPA will promulgate a final rule which will also apply to monitoring requirements for the 10 VOCs promulgated on January 30. This ensures that the monitoring requirements for the 18 VOCs (the 8 Phase I and 10 Phase II VOCs) remain identical. Consequently, the changes promulgated today will also apply to the monitoring requirements for the 10 VOCs published January 30, 1991.

2. Sampling Points

In the proposal EPA stated that the Agency had received information suggesting that petroleum and hazardous material spills and leaks have contributed to drinking water contamination in systems using plastic pipe. EPA stated that it is concerned about this issue because this contamination typically occurs after the designated sampling point and consequently would not be detected. As a result EPA proposed in §141.24 (f) (1) and (2) that "if conditions warrant, the State may designate additional sampling points within the distribution system or at the consumer's tap, which more accurately determines consumer exposure."

Most comments received on the proposed change to the sampling points opposed the concept. Objections raised by commenters addressed three major issues: (1) Whether the SDWA granted EPA the legal authority to require sampling at the consumer's tap; (2) permeation of plastic pipe typically occurs in service lines and thus is generally within the consumer's control; and (3) the Agency failed to specify best available technology to address this problem. While not agreeing with these comments, the Agency has decided to give further consideration to options addressing the issue of VOC permeation of plastic pipe. Accordingly, EPA has dropped this proposed monitoring provision in the final rule. As noted above, because the Agency intends that the VOC monitoring requirements are identical, this decision to withdraw the changes in the sampling points will also apply to the final rule published January 30, 1991. The Agency intends to address this issue in a subsequent rulemaking seeking additional information and solutions to the permeation issue.

3. Initial and Repeat Base Monitoring Requirements

In the VOC regulations promulgated in July 1987, distinctions in base (or minimum) requirements were made between ground and surface water systems, systems which have more than or less than 500 service connections, and vulnerable/non-vulnerable systems. In streamlining the requirements, EPA proposed that all systems (regardless of system size) take four quarterly samples each compliance period. After the initial round of four quarterly samples, all systems which do not detect VOCs in the initial round of quarterly sampling would monitor annually beginning in the next calendar year after quarterly sampling is completed. Ground water systems which conducted at least three years of annual and/or quarterly sampling and did not detect any VOCs would be allowed to reduce the sampling frequency to a single sample every three years. EPA also proposed that systems could grandfather sampling results from the Section 1445 monitoring for unregulated contaminants for the initial compliance period even if only one sample rather than 4 quarterly samples were analyzed in the initial compliance period.

EPA received several comments disagreeing with the requirement that systems take four quarterly samples during the initial compliance period. These commenters cited the regulatory impact on small systems and non-transient water systems. In addition, one commenter suggested that "use" should be considered in determining the initial sampling frequency. Another commenter stated that increasing the sampling frequency to annual (rather than every 3 years) was a major policy shift and would have an adverse impact on small systems.

EPA continues to believe that 4 quarterly samples are necessary to establish a baseline of analytical results for any VOCs which occur with sufficient frequency. However, we note that because all systems must have completed their initial round of monitoring by January 1992 under existing requirements in § 141.24(g) (monitoring for 8 regulated contaminants) and § 141.40 (monitoring for unregulated VOC contaminants), the initial monitoring requirements (i.e., 4 quarterly samples) will only apply to new systems or those systems which have a new source. Most systems will be able to begin annual monitoring in January 1993 if the initial sampling results are grandfathered. We feel that initial sampling frequency based upon "use" is not practical or protective of public health because available occurrence data indicate that VOCs are found in virtually all geographic areas in the United States.

4. Increased Monitoring

In the 1987 VOC rule, systems which detect VOCs (defined as any analytical result greater than 0.0005 mg/l) were required to monitor quarterly. Several commenters believed that this regulatory minimum detection limit was too low and should alternately be 50% or 80% of the MCL.

EPA notes that the 0.0005 mg/l requirement has been in effect since the

1987 VOC rule. This requirement serves to give early indication that contamination has occurred before a violation occurs. EPA acknowledges that false positives might rarely occur (i.e., less than one percent of the time) with a detection limit of 0.0005 mg/l. However, we note that requirements in § 141.24 (f)(13) also allow the State to require confirmation samples for positive or negative results. In addition, the State has the option to delete results of obvious sampling errors. EPA believes that States have sufficient discretion to address the issue of false positives through these provisions.

Another commenter argues that waivers will be difficult to obtain because of unreasonably low detection limits. EPA regulations do not allow systems which have detected VOCs to receive waivers because even detecting contamination is evidence that the system is vulnerable. This contamination should be further examined by additional monitoring.

Several commenters objected to the provision which allows States to reduce the sampling frequency of systems which detect contamination. One commenter believed that this determination should not be made for ground water systems until four quarters of monitoring have elapsed. EPA believes that the proposed requirement that the State determine the system is "reliably and dependably" below the MCL is protective of health. The two quarter requirement is sufficient as a minimum standard but we note that there may be situations where additional monitoring (beyond the two quarter/four quarter minimum) will be necessary to establish a baseline. In these cases, if the State does not make the "reliably and dependably" determination, systems will be required to continue to monitor quarterly.

5. Vulnerability Assessments and Waivers

Most commenters agreed with the concept of vulnerability assessments and waivers particularly the provision for a separate vulnerability decision by consideration of use and susceptibility. Several commenters noted that the shift of responsibility from States to water systems to conduct vulnerability assessments could result in waivers being unavailable for small systems. Several commenters stated that additional guidance was necessary to ensufe systems know how to conduct vulnerability assessments.

As stated in the proposal, EPA shifted the responsibility to conduct vulnerability assessments from States to water systems because we believe that these assessments are part of the systems' monitoring responsibilities. In addition, previous comments indicated that State resource constraints precluded the conduct of vulnerability assessments. Consequently, EPA shifted the responsibility to conduct vulnerability assessments to water systems. EPA agrees with the commenters that additional guidance on how to conduct vulnerability assessments is needed and is currently developing such guidance. This guidance will be completed and made available to water systems and States prior to the compliance period which begins January 1, 1993.

Our goals are to efficiently utilize State and PWS resources and to be consistent with Phase II monitoring requirements. EPA believes that today's rule furthers these goals.

B. Aldicarb, Aldicarb Sulfoxide and Aldicarb Sulfone

1. Aldicarb, Aldicarb Sulfoxide and Aldicarb Sulfone MCLGs

On January 30, 1991 EPA reproposed MCLGs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone at 0.001, 0.001, and 0.002 mg/kg/day. The MCLG for each of the three chemicals was based on a revised RfD adopted in August 1990 that reflected non-cancer endpoints of toxicity, cholinesterase inhibition (ChEI), and, for the parent compound (aldicarb), clinical signs in animals (soft mucoid stool and diarrhea) and humans (nausea, vomiting and diarrhea in some sensitive individuals were noted in epidemiological data). Cancer classification is Group D (inadequate human evidence of carcinogenicity).

Public Comments

EPA has previously addressed the public comments received in response to the proposals of November 13, 1985 and May 22, 1989 in the **Federal Register** notice of January 30, 1991 (56 FR 3600). Four commenters responded to the January 1991 proposal. One commenter argued that EPA's RfD of 0.0002 mg/kg/day used in developing the proposed aldicarb MCLG is legally and scientifically unsupportable. In support of this position, the commenter cited the May 23, 1990 recommendation of the joint study group of the Agency's Science Advisory Board and Scientific Advisory Panel (SAB/SAP) that ChEI is not an adverse effect and therefore should not be the basis of EPA regulation for aldicarb. One commenter advised that the Agency establish the MCLG and MCL for aldicarb and the sulfoxide metabolite based on the Haines (1971) human study. This commenter suggested using the NOAEL for clinical signs in this study, 0.05 mg/kg, and a 10-fold uncertainty factor (UF) to establish the MCLG. For aldicarb sulfone, this commenter indicated that the lowest dose tested in the one-year dog feeding study (Hazleton Labs, 1987), 0.11 mg/kg/day, is the NOAEL and should be used with a 10-fold UF to establish the MCLG for aldicarb sulfone.

Two additional commenters agreed with the position expressed by the first commenter relative to the SAB/SAP recommendation on ChEI as only a marker of exposure, and that the Agency should not lower the RfD for aldicarb. However, one of these two commenters noted that the MCLG should be based on child exposure.

A fourth commenter indicated that the reproposed MCLGs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone, based on the revised RfD of 0.0002 mg/kg/day, may not provide a sufficient margin of safety against acute toxic symptoms in the general population at levels as low as 0.0011 mg/kg/day.

The first commenter also noted that establishing an MCLG based on ChEI is inconsistent with the Agency regulation for fluoride and silver.

Response to Public Comments

Aldicarb and aldicarb sulfoxide. The Agency reproposed an MCLG of 0.001 mg/l for aldicarb and aldicarb sulfoxide based on a revised RfD of 0.0002 mg/kg/day (July, 1990), as described in the January 30, 1991 Notice (56 FR 3604). This RfD was based on clinical effects and cholinesterase inhibition (ChEI) in animals and humans following exposure to aldicarb. The Agency sought public comment on considering both clinical signs and ChEI in setting the RfD and, in turn, the MCLG.

Many of the studies considered in the risk assessment for both aldicarb and aldicarb sulfoxide reported ChEI in exposed humans or animals. Consideration of blood ChEI as an adverse effect has been and remains controversial among the scientific community. ChE may be significantly inhibited in the blood without apparent signs of impaired function, histological damage or other clinical effects in exposed individuals. There are instances, though, where low levels of ChEI are observed along with clinical manifestations. A more detailed discussion of the levels of ChEI for the studies considered in the risk assessment of aldicarb and its sulfoxide is given in the January 30, 1991 Notice.

The Agency agrees with the public comments in that blood ChEI can be considered as a biomarker of exposure.

However, to be protective of public health, the Agency considers that ChEI can not be totally discounted in the risk assessment for aldicarb, aldicarb sulfoxide, and aldicarb sulfone. The Agency is currently evaluating the correlation between ChEI and clinical signs of toxicity. If the conclusions of this evaluation alter the basis presented for the MCLG in this notice, then the Agency will initiate a process for determining whether the MCLG should be revised. Thus, after consideration of public comments, the Agency has decided to base the final MCLG for aldicarb, aldicarb sulfoxide, and aldicarb sulfone, on clinical signs. EPA will continue to examine the relevance of using ChEI in establishing an MCLG. Over a period of time this effort is expected to resolve the questions related to the significance of ChEI.

Because the controversy has not yet been fully resolved, EPA developed an alternative approach for setting the MCLG, using clinical signs.

Since both the Agency-verified RfD and the alternative derivation of the MCLG result in an MCLG value of 0.001 mg/l, the Agency is promulgating the MCLG at this level. An MCLG of 0.001 mg/l will be sufficiently protective of public health.

The final MCLG of 0.001 mg/l is based on signs of clinical toxicity in dogs and humans exposed to aldicarb. The quantitative assessment stems from a no-effect level for clinical effects of 0.02 mg/kg/day as determined in a 1-year dog study (Hazelton Labs. Inc., 1968). At higher doses, effects such as diarrhea and soft stools were observed. The Agency has determined that these signs are representative of clinical signs of toxicity. In keeping with general Agency practice (56 FR 3532), an uncertainty factor of 100 was used to account for a no-effect level from an animal study that considers intra- and interspecies differences in response to toxicity. The resulting value, 0.0002 mg/kg/day, is numerically the same as the RfD which considers both clinical effects and ChEI. This was adjusted by the assumption of a 70 kg adult drinking an average of 2 liters water per day and a relative source contribution of 20% to yield an MCLG of 0.001 mg/l.

The no-effect level of 0.02 mg/kg/day and resulting MCLG of 0.001 mg/l is supported qualitatively by a controlled human study (Haines, 1971) and takes into consideration the observation reported in the Goldman study (1990). In the Haines study, no significant clinical effects were observed in four healthy males given doses of 0.025 or 0.05 mg/kg/day. A higher dose of 0.1 mg/kg/day resulted in neurological effects. The no-effect level of 0.05 mg/kg/day was not used as the sole basis for the MCLG because of the limited scope of the study such that a sensitive population may not have been studied, and the narrow range between the no-effect level and the effect level. Moreover, Goldman et al. reported clinical effects at estimated doses lower than those reported by Haines.

Goldman el al. reported clinical effects in humans (including women and children) following three separate incidents involving aldicarb/aldicarb sulfoxide in California. Exposure to aldicarb sulfoxide from the contaminated watermelons and cucumbers were estimated to range from 0.002 to 0.08 mg/kg body weight. A low effect level for clinical effects was estimated at 0.002 mg/kg. This study is not used as the sole basis for the MCLG, however, since the authors noted that the dosage calculations were uncertain and because of the wide range of human sensitivity demonstrated by these individuals. The authors relied on self-reports of food consumption, estimates of weight consumed and estimates of body weight.

Although each of the studies has limitations, as described above, the Agency has determined that the dog and human studies taken together support the calculation of an MCLG of 0.001 mg/l.

In summary, the Agency is promulgating an MCLG of 0.001 mg/l for aldicarb and aldicarb sulfoxide based on a weight of evidence of clinical signs of toxicity observed in humans and animals.

Aldicarb sulfone.

The Agency reproposed an MCLG of 0.002 mg/L for aldicarb sulfone in the January 30, 1991 notice. This level was based on a no-observed-adverse-effect level for ChEI in blood of 0.1 mg/kg/day and an uncertainty factor of 300. Information on clinical effects in the study was not reported.

Aldicarb sulfone is considered less toxic than the parent based on a 25-fold difference in acute toxicity; the LD_{50} for the sulfone is 25 mg/kg/day compared to the LD_{50} for aldicarb of 1 mg/kg/day . No data are available to determine clinical effects or chronic toxicity associated with exposure to aldicarb sulfone. As stated above, the Agency is currently evaluating the correlation between ChEI and clinical signs of toxicity. Thus, the Agency will not use the MCLG of 0.002 mg/L proposed for the sulfone in the reproposal. Rather, to be protective of public health, the Agency is promulgating the MCLG of 0.001 mg/L established for aldicarb and aldicarb sulfoxide, based on clinical signs of toxicity as a surrogate for the sulfone. If the conclusions of the Agency evaluation of ChEI alter the basis for the MCLG, then the Agency will initiate a process for determining whether the MCLG for aldicarb sulfone should be revised.

In summary, the Agency is promulgating an MCLG of 0.001 mg/l for aldicarb sulfone.

2. Aldicarb, Aldicarb Sulfoxide, and Aldicarb Sulfone MCLs

The proposed MCLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone were based upon an analysis of several factors including: (1) The effectiveness of the best available technology (BAT—granular activated carbon) in removing aldicarb, aldicarb sulfoxide, and aldicarb sulfone to levels at or below the proposed MCLs of 0.003 mg/l; (2) the feasibility (including costs) of applying BAT for large systems. EPA estimated that the cost to remove aldicarb, aldicarb sulfoxide and aldicarb sulfone using GAC to be $10–14 per household and thus feasible; and (3) the performance of analytical methods as reflected in the practical quantification level (PQL) for each contaminant. In the proposed notice EPA stated that data from Water Supply Studies showed that the PQLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone could be set at 0.003 mg/l by broadening the acceptance limits to ±55%.

The pivotal comments concerned establishing the PQL for aldicarb, aldicarb sulfoxide, and aldicarb sulfone. One commenter noted that Water Supply Studies #22–25 which were used to calculate the PQL did not "bracket" the proposed levels. This commenter noted that the lowest levels in Water Supply Studies #22–25 were 0.00947 mg/l for aldicarb, 0.00867 mg/l for aldicarb sulfoxide, and 0.00833 mg/l for aldicarb sulfone. Several commenters objected to EPA's adjustment of PQL acceptance limits to achieve lower MCLs. These commenters noted that the usual Agency practice is to use ± 20% or ± 40% of the true value. These commenters objected to the Agency's broadening the acceptance limits to ± 55% arguing instead that EPA should use a single fixed acceptance limit.

After considering the comments, EPA decided to revisit the rationale on which the PQLs were based. As a result, the Agency concluded that the elements of the rationale that involved extrapolating data were inappropriate for this compound.

EPA set the proposed PQLs of 0.003 mg/l by extrapolating from the lowest

levels in Water Supply Studies #22–25 to the point at which 75 percent of the participating laboratories would be able to analyze within ±55 percent of the true value. EPA used this extrapolation technique because the Water Supply Studies #22–25 study designs did not include the levels of concern, i.e., MCLGs of 0.001 and 0.002 mg/l proposed in the January 1991 Notice (56 FR 3606).

The existing Water Supply Studies were designed to provide data for assessment of laboratory performance at levels of concern which were higher (i.e., MCLGs of 0.009 mg/l proposed in November 1985 (50 FR 46986) and 0.01 and 0.04 mg/l proposed in May 1989 (54 FR 22089)). In this case, the levels evaluated in the Water Supply Studies were above the toxicological levels of concern (0.001 mg/l) for aldicarb, aldicarb sulfoxide and aldicarb sulfone as proposed in January 1991. For this reason we decided to use an alternate procedure for setting the PQL for aldicarb, which sets the PQL at five times the interlaboratory method detection limit (IMDL), was first discussed in setting the MCL for vinyl chloride (52 FR 25690, July 1987). This procedure is used to set the PQL when there is not water supply study data at the level of concern or when the usual proceedure would result in a PQL which poses a greater than 10–4 cancer risk.

The aldicarb, aldicarb sulfoxide and aldicarb sulfone PQLs were determined using the range of 5 to 10 times the IMDL. The PQLs of 0.003, 0.004 and 0.002 mg/l for aldicarb, aldicarb sulfoxide and aldicarb sulfone, respectively, are based on the lower factor of 5 times the respective IMDLs (i.e., 0.0005, 0.0008 and 0.0003 mg/l). EPA has previously stated (i.e., EDB (56 FR 3526)) that the use of 5 times the IMDL instead of 10 times the MDL to set the PQL may be appropriate when other considerations suggest the PQL should be lower (i.e., where there is a lack of performance evaluation data at the level of concern for a particular contaminant). In the case of aldicarb and its metabolites, the Agency has decided to base the PQL on 5 times the IMDL because (a) it is feasible and (b) it is closer to the MCLG than the 10 multiplier.

The validation study for Method 531.1 (the approved method for the aldicarbs) provides evidence that a PQL of 3.0 mg/l is achievable for aldicarb. The design for this study is comparable to that of the Water Supply Studies (i.e., unknown concentrations, reagent grade water, collaborative). The level of 0.003 mg/l (3.24 μg/l, was analyzed for aldicarb in the study and resulted in good precision and accuracy with a mean recovery of 3.24 μg/l and a standard deviation of 0.33 μg/l. Results of analyses for aldicarb sulfoxide and aldicarb sulfone also had good precision and accuracy but the levels analyzed were at levels of 6.40 and 6.44 μg/l, respectively. EPA believes that these method validation results give additional support for the PQLs.

EPA recognizes that, at the PQL levels chosen, slightly less precision and accuracy will occur. However, EPA believes that it is appropriate to accept less precision in order to obtain more stringent levels of control. Because of the lack of performance evaluation studies at the MCLG, the acceptance limits for aldicarb, aldicarb sulfoxide and aldicarb sulfone will be based on two standard deviations using Water Supply Study statistics. EPA will reevaluate this when it acquires the appropriate data at levels below or at the PQLs, from ongoing Water Supply Study data to assess "fixed true value" acceptance limits. EPA also believes that the precision and accuracy at these levels will improve after more use of the relatively new methodology.

EPA has examined the health risks of setting the MCLs above the MCLGs of 0.001 mg/l. Children are the most sensitive population for these compounds. However, a child likely would not consume a whole liter at one time. More typically children consume water throughout the day and this would mitigate against adverse effects at the MCLs and below. The adverse effects of aldicarb are thought to be reversible within 4 to 6 hours at higher levels of exposure. Therefore, EPA believes that the MCLs of 0.003 mg/l for aldicarb, 0.004 mg/l for aldicarb sulfoxide and 0.002 mg/l for aldicarb sulfone are protective for children. Until the analytical chemistry and laboratory performance improve, EPA believes the MCLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone are set at the lowest level feasible. Consequently, for the reasons cited above the MCL for aldicarb, aldicarb sulfoxide and aldicarb sulfone are established at 0.003 mg/l, 0.004 mg/l and 0.002 mg/l, respectively.

C. Pentachlorophenol

1. Pentachlorophenol MCLG

On January 30, 1991, EPA proposed an MCLG of zero, based on a drinking water contaminant classification of Category I for pentachlorophenol (PCP). This proposal was based on the classification of PCP as a Class B2 carcinogen under EPA's cancer classification system (i.e., probable human carcinogen). EPA, in reaching the B2 classification, determined that there is sufficient evidence of carcinogenicity for pentachlorophenol from animal studies. This decision was supported by the Science Advisory Board in April 1990. Two grades of pentachlorophenol (purified commercial and technical grades) both induced multiple tumor types at different dose levels in male and female mice.

Summary of Comments

Three organizations submitted comments on the Agency's carcinogen classification for PCP. All three commenters believe that the carcinogenic evidence from animal studies is limited. These commenters argued that PCP should be classified in Class C (with an MCLG of 0.2 mg/l), based on a National Toxicology Program bioassay which detected a response in only one species of B6C3F1 mice. These commenters cited other negative rodent studies. One commenter calculated the cancer risk and claimed that EPA overestimated the cancer risk by a factor of 10.

EPA's Response to the Comments

After careful review of the comments, EPA reaffirmed that pentachlorophenol should be classified as B2 carcinogen (probable human carcinogen). The studies cited by the commenters were previously considered by the Agency and no new information was provided by the commenter.

EPA's B2 classification is based on inadequate human data and sufficient evidence of carcinogenicity in animals: statistically significant increases in the incidences of multiple biologically significant tumor types (hepatocellular adenomas and carcinomas, adrenal medulla pheochromocytomas and malignant pheochromocytomas, and/or hemangiosarcomas and hemangiomas) in one or both sexes of B6C3F1 mice using two different preparations of pentachlorophenol. In addition, a high incidence of two uncommon tumors (hemangiomas/hemangiosarcomas and adrenal medulla pheochromocytomas) was observed with both preparations. This classification is supported by mutagenicity data, which provide some indication that PCP has clastogenic potential.

Several studies in rodents cited by commenters were unable to demonstrate the carcinogenicity of PCP. However, these studies were all judged by EPA to be limited and not useful for drawing conclusions concerning the carcinogenicity of PCP. The study reported by Innes et al. (1969) used only one dose with an insufficient number of animals. The study by Catilina (1981)

used an inappropriate route of administration with only one dose, and there was excessive mortality. The study by Schwetz et al. (1978) used an inadequate number of animals, and it is not clear whether the maximum tolerated dose (MTD) had been met. Finally, the dose level, frequency and duration of exposure were limited in the study by Boutwell and Bosch (1959).

In quantifying the cancer risk, EPA used pooled tumor incidence of hemangiosarcoma/hemangioma, pheochromocytomas and liver neoplasm in the female mice to obtain a slope factor of 0.12 per (mg/kg) /day. This slope factor results in a unit risk of 3×10^{-6} per (μg/l). This means an adult person who drinks 2 liters of contaminated water per day for life (70 years), is expected to have an upper bound cancer risk of 3 in a million at a concentration of 1 μg/ 1 water. Thus, at the proposed MCL of 1 μg/l, the upper bound risk of cancer is within the 10^{-4} to 10^{-6} range. The statement in the January 30 **Federal Register** (page 3608) that "A cancer unit risk estimate of 4.76 E–08 cases/person (μg/l) /yr" should be deleted.

EPA Conclusion

EPA reaffirms the Class B2 classification for pentachlorophenol and places pentachlorophenol in drinking water contaminant Category I. Consequently, the MCLG is set at zero.

2. Pentachlorophenol MCL

The proposed MCL for pentachlorophenol was based upon an analysis of several factors including: (1) The effectiveness of the best available technology, granular activated carbon, in reducing influent concentrations to the proposed MCL of 0.001 mg/l or less; (2) the feasibility (including costs) of applying BAT for large systems at approximately $10 per household per year; (3) the performance of available analytical methods as reflected in the PQL. Data from Water Supply Studies #22–25 indicated that the PQL could be established at 0.001 mg/l with an acceptance limit of ± 50%; and (4) coparison of the individual lifetime carcinogenic risk of 3×10^{-6} for the MCL to EPA's target risk range of 10^{-4} to 10^{-6}. EPA requested comment on whether the MCL should be established at a level below the 10^{-6} risk level.

EPA received numerous comments on the PQL. Commenters noted (1) that EPA failed to identify the procedures it used to derive the PQL; (2) that EPA underestimated the analytical variability at the MCL; and (3) that the proposed MCL will yield unacceptably large laboratory performance variability. Several organizations commented on the question of whether the PQL should be established at a level below the 10/−6/ risk range. These commenters stated that health risk should not be part of the PQL determination. Several commenters noted that EPA has yet to establish a consistent approach to establishing PQLs. These commenters stated that the PQL should be determined independently and not set to achieve an MCL that is within EPA's acceptable risk range. Several commenters stated that they do not favor development of MCLs below the 10/−6/ risk range. One commenter argued that EPA should establish the MCL at the 10/−6/ risk range (i.e., 0.0003 mg/l).

The procedures EPA used to establish the PQL for pentachlorophenol are similar to those used in the PQL assessments for prior regulated contaminants, i.e., the eight VOCs on July 8, 1987 (52 FR 25690) and 33 pesticides, VOCs and IOCs on January 30, 1991 (56 FR 3526). The procedures EPA uses to establish PQLs are described in the July 8, 1987 Notice on pp. 25699–25700. EPA believes that its establishment of the pentachlorophenol PQL is consistent with its policy as articulated in those prior Notices.

As stated in the January 1991 proposed rule, EPA in May 1989 estimated the PQL to be 0.001 mg/l, which was based on 10 times the IMDL, because of the lack of Water Supply Study data. EPA has previously used this estimation technique for several contaminants. This level is typically a higher level than the MDL and represents a practical and routinely achievable level with reasonable certainty that the reported value is reliable. EPA subsequently received and analyzed Water Supply Study data to determine the proposed PQL with accompanying acceptance limits.

Based on our reanalysis of the Water Supply Study data, the Agency concluded that the data did not support the proposed PQL of 0.0001 mg/l. This was evident by the erratic laboratory performance for concentrations that were less than 0.0001 mg/l. Consequently, a revised PQL was assessed using the procedures described above. The pentachlorophenol PQL is based upon the results of EPA and State laboratory data from Water Supply Studies #22–25. EPA calculated the ±50 percent acceptance limits (i.e., true value of the sample ±50 percent) based upon these Water Supply Study statistics. The "plus or minus percent of the true value" acceptance limits were derived taking into consideration the expected precision and accuracy. This range closely approximates the 95 percent confidence limit estimated from the regression equation determined from the Water Supply Study data. EPA believes a PQL is achievable if the Water Supply Studies show that more than 75 percent of the laboratories are within the target range. In the case of pentachlorophenol, the PQL was set at a concentration where at least 75 percent of the EPA and State laboratories were within the specified acceptance range. A plot of the percent of laboratories passing (within the ±50 percent acceptance range) versus true concentration of the samples demonstrated that the PQL should be set at 0.001 mg/l. EPA subsequently included data from Water Supply Studies #26 and #27 in its analysis. These data confirm that concentrations equal to or greater than the PQL of 0.001 mg/l with an acceptance limit of ±50 percent provides a performance target for laboratories that is achievable by 75 percent of the EPA and State laboratories.

Several commenters noted that a ±50 percent acceptance limit will result in unacceptable analytical variability among laboratories. These commenters argued that EPA must establish a lower fixed acceptance range (i.e., ±20% or ± 40%). Though EPA agrees with these commenters that a single fixed acceptance limit is desirable, EPA has not established these limits because (1) many of the methods are relatively new and require sophisticated equipment and highly trained analysts which still results in variable laboratory performance and (2) the analysis of Water Supply Study data demonstrates that laboratory performance can in fact vary for some of the contaminants. As laboratories gain experience with the instrumentation and methodology, EPA anticipates improvements in laboratory performance. EPA is continually evaluating ongoing Water Supply Study data as it becomes available. These evaluations help determine whether the acceptance limits for regulated contaminants should be amended as laboratory performance improves.

As indicated previously, several commenters stated that they do not favor establishing MCLs below 10/−6/ risk. This view is consistent with the Agency's policy of setting drinking water standards within the 10/−4/ to 10/−6/ lifetime risk range. In response to the commenter who supported setting the MCL for PCP at 0.0003 mg/l (i.e., 10/−6/ lifetime risk), we note this regulatory level is not feasible at this time because it is less than the PQL of 0.001 mg/l.

D. Barium

1. Barium MCLG

In May, 1989 EPA proposed an MCLG of 5 mg/l based upon the Wones et al. (1987) human clinical study which failed to detect adverse effects at 10.0 mg/l. EPA applied an uncertainty factor of 2 to derive an MCLG of 5 mg/l. Subsequent to the May, 1989 proposal, the Agency adopted an RfD of 0.07 mg/kg/day which was based on the Wones 1990 study (an update of the Wones 1987 study). This RfD was adjusted for the use of 1.5 liters per day in the study by using a NOAEL of 7.5 mg/l rather than the proposed 10.0 mg/l. In addition, the uncertainty factor changed from 2 to 3. The MCLG was calculated as follows:

$$\frac{(0.07\ \text{mg/kg/day})(70\ \text{kg})}{2\ \text{liters/day}} = 2.45\ \text{mg/l}$$

which was rounded to 2 mg/l. EPA did not factor the relative source contribution into this calculation since the basis for the RfD is a human study in which contributions from food and air were taken into account.

EPA received four comments from the public concerning the proposed 2 mg/l barium MCLG; all were opposed. One commenter argued that EPA was unreasonably conservative when it used an uncertainty factor (UF) of 3 in the calculations that were used to determine the proposed 2 mg/l barium MCLG. This comment recommended an MCLG of 10 mg/l based on the use of an UF of 1. Other comments recommended a higher MCLG, based on the use of an UF of 2. Two commenters argued that EPA should not have mathematically rounded down in the calculations that were used to arrive at the proposed 2 mg/l MCLG. Rather, this commenter recommended that EPA mathematically round up to yield an MCLG of 3 mg/l. One commenter argued that EPA should set separate standards for insoluble (e.g., barium sulfate) and soluble barium compounds (e.g., barium chloride) because the toxicity of these two species is different.

EPA realizes that there are valid arguments for an UF less than 3. Prior to the 2 mg/l proposal in January 1991, EPA considered an UF of 2. EPA believes that the UF should reflect the uncertainty in the data base—the greater the uncertainty in the data base, the greater the UF that should be used to detemine the MCLG. That is, the greater the uncertainty about the human toxicity of a chemical, the more cautious the Agency should be in determining the UF. In EPA's judgment, the uncertainty in the relevant barium data base is such as to require an UF of 3. Thus, EPA disagrees with those who recommend an UF less than 3.

EPA policy is to use the "rounded" RfD value in its calculation of the MCLG. In this case, the MCLG calculation noted previously based on the Agency RfD of 0.07 mg/kg/day yields an MCLG of 2.45 mg/l. This value is then rounded to a single significant figure of 2 mg/l.

We agree that an aqueous suspension of relatively insoluble barium sulfate is much less toxic than a solution of relatively soluble barium chloride. However, we do not believe that this fact is relevant to the MCLG determination. All available evidence indicates that at the same dissolved level in drinking water (i.e., mg/l dissolved barium), one barium salt should present the same toxicity as the other. Once dissolved in water, the barium ions produced by barium sulfate or barium chloride are indistinguishable and thus so is the resulting toxicity. Thus EPA disagrees with the recommendation that separate standards should be set for soluble and insoluble barium compounds.

For the reasons stated above, EPA continues to place barium in Category III and promulgates an MCLG of 2 mg/l.

2. Barium MCL

The current barium MCL of 1 mg/l was promulgated in 1975 (40 FR 59570). EPA notes the proposed MCL would raise the level from 1 mg/l to 2 mg/l. EPA continues to believe the current standard is feasible and consequently believes the revised standard of 2 mg/l is likewise feasible. Consequently, the MCL for barium is promulgated as proposed at 2 mg/l.

E. 1415 Variance Option

In the proposal EPA stated that there may be some water supplies that serve more than 1,500 people (500 service connections) but fewer than 3,300 people (1,000 service connections) that face high compliance costs. Consequently, EPA proposed an option to allow variances to those systems not eligible for additional exemptions beyond the initial three-year exemption (i.e., systems serving more than 1,500 people but fewer than 3,300 people). EPA is not finalizing that proposal today but instead may repropose this option in the future.

F. Analytical Methods

In the January 30, 1991 notice, EPA cited an improvement to EPA Method 525 evaluated by the EPA Environmental Monitoring and Support Laboratory (56 FR 3550). The improved method uses C–18 LSE discs as well as the C–18 LSE cartridges. In addition, EPA noted in the January 30 notice that several commenters complained about the use of diazomethane as the esterifying agent in Method 515.1 for 2,4–D, 2,4,5–TP, and pentachlorophenol. While EPA laboratories have used this reagent safely for years, EPA agreed that this is a matter of concern. In the January notice, EPA recommended that in the interim those laboratories that do not wish to use diazomethane can use the derivation procedure in the packed column methods currently cited in 40 CFR 141.24(f) for 2,4–D and 2,4,5–TP. Pentachlorophenol can be analyzed by Method 525.

EPA has received several comments which questioned whether the procedures cited above (i.e., the disc cartridge for Method 525 and the derivation procedure for Method 515.1) are approved as EPA methods. EPA is removing this ambiguity by citing revised methods dated May, 1991 which allow the use of these procedures.

G. Corrections to the January 30, 1991 Notice

This notice also corrects errors contained in the January 30, 1991 Notice (56 FR 3526) and adds clarifications to the regulatory language. These corrections and clarifications are described below.

In § 141.12(c) the maximum contaminant level for total trihalomethanes is changed from 0.1 mg/l to 0.10 mg/l.

In § 141.23(a)(4)(i) EPA has added language to clarify that a system which composites samples can use the original sample. It is not necessary for the system to retake the sample when contaminants are detected.

In § 141.23(i)(1) EPA added the word "method" in the last sentence to clarify which detection level applies for calculation of samples below zero.

In § 141.23(k)(1) the date in footnote 4 for "Methods for Determination of Inorganic Substances in Water Fluvial Sediments" is changed from 1985 to 1989. Also in (k)(1), Method 270.3 is deleted from the approved list of methods. EPA discussed deleting this method on page 3548 of the January 30, 1991 notice.

In § 141.23(k)(2) Method 200.7a, Inductively Coupled Plasma, was an approved method and is added.

The table in § 141.23(k)(4) which lists holding times for mercury is changed to read 28 days for plastic and glass. This is consistent with Table 17 on page 3549 of the January 30, 1991 Notice.

In § 141.23(k)(5)(ii), the second nitrate in the table with an acceptance limit of ±15 percent, ≥0.4 mg/l is changed to nitrite ±15 percent ≥0.4 mg/l.

Revisions to § 141.23 Inorganic Chemical Sampling and Analytical Requirements inadvertently eliminated inorganic sampling and analytical requirements for the 9 inorganics listed in § 141.11. EPA is reinserting the previous inorganic monitoring and analytical requirements by adding paragraphs (l) through (q) to § 141.23 (previously § 141.23 (a) through (e)). This correction has the effect of retaining the previous inorganic requirements for cadmium, chromium, mercury, nitrate, and selenium until July 30, 1992; for barium until January 1, 1993; and beyond July 30, 1992 for arsenic.

Any alternate test procedures previously approved under § 141.27 for both inorganic and organic contaminants continue to be effective until July 30, 1992 and January 1, 1993, for barium.

In § 141.24(e), Method 505 can also be used to analyze for endrin and is added to the list of acceptable methods.

In § 141.24(h)(8) the sentence "After a *maximum* of four quarterly samples show the system is in compliance * * *" is changed to read "After a *minimum* of four quarterly samples show the system is in compliance * * *" (emphasis added). The reference to paragraph (h)(12) is changed to (h)(11).

In § 141.24(h)(12)(iv) toxaphene is added to the list of contaminants which can be analyzed using EPA Method 508.

In § 141.24(h)(13)(i) the reference to paragraph (h)(13) is changed to paragraph (h)(12).

The laboratory certification requirements for the pesticides were not included in the final rule. In § 141.24(h)(19) EPA is including laboratory certification requirements. The performance requirements were discussed and listed on pages 3550 to 3552 of the January 30, 1991 Notice.

In § 141.62(b) the MCL for fluoride is changed from 4 mg/l to 4.0 mg/l.

In § 141.57(b) the reference to § 141.52(h) should be changed to § 141.62(b).

In the footnotes to § 143.4 (12) and (13) the updated versions of the methods should have been cited. In footnote 4, EPA Method 200.7, version 3.1, April 1990 is changed to version 3.2, August. 1990; In footnote 5, EPA Method 200.8, version 4.1, March 1990, is changed to version 4.3, August 1990; in footnote 6, EPA Method 200.9, version 1.0, April 1990, is changed to version 1.1. August 1990.

In § 143.4(12) a later version of the method is cited. EPA changes Method I–305i–84 to Method I–305i-85.

In § 143.4(13) a later version of the method is cited. EPA changes Method I–3720–84 to I–3720–85.

IV. Economic Analysis

Executive Order 12291 requires EPA and other regulatory agencies to perform a regulatory impact analysis (RIA) for all "major" regulations, which are defined as those regulations which impose an annual cost to the economy of $100 million or more, or meet other criteria. The Agency has determined that the proposed rule is a minor rule for purposes of the Executive Order. This regulation has been reviewed by the Office of Management and Budget as required by the Executive Order and any comments they make will be available in the public docket.

In accordance with the Executive Order, the Agency previously conducted an assessment of the benefits and costs of regulatory alternatives as part of the Phase II rule which was promulgated in the January 30, 1991 **Federal Register**. This assessment in the Phase II rule determined the impacts of this regulation as part of the Phase II rule and consequently these impacts are not separately reconsidered in this notice.

A. Regulatory Impact

EPA's analysis conducted under the proposed rule for 38 contaminants (54 FR 22062, May 22, 1989) indicates that approximately 378 systems would violate the aldicarb MCL of 0.003 mg/l based on the uncertainty in the data base. EPA does not believe MCLs of 0.004 mg/l for aldicarb sulfoxide and 0.002 mg/l for aldicarb sulfone will change this estimate. An additional 825 systems would violate the MCL for pentachlorophenol.

One commenter provided information disputing EPA's estimate of the 378 systems which would violate the MCLs for aldicarb, aldicarb sulfoxide and aldicarb sulfone. This commenter noted the relative lack of occurrence data to estimate regulatory impact. This commenter assumed 1% of the systems (654 systems) would exceed the MCL for aldicarb which is almost double the EPA estimate. EPA acknowledges the uncertainty in determining the regulatory impact and stated in the Proposed Notice that ±50% of its estimate of 378 systems (189 to 567) systems may violate the MCL. Though it is conceivable that 654 systems may violate the aldicarb MCL, EPA points out that the recently completed National Pesticide Survey did not detect aldicarb in any well at levels exceeding 0.00071 mg/l.

Several commenters stated that EPA should consider the impact of these regulatory requirements on the collateral effects which trickle down through other regulatory programs such as Superfund, the Clean Air Act (CAA), stream water quality standards under the Clean Water Act and requirements under the Resource Conservation and Recovery Act (RCRA). While EPA acknowledges that these secondary impacts may occur, the purpose of today's action is solely to establish drinking water standards that public water systems must comply with. Consequently, EPA does not consider the cost of secondary impacts which may occur under the CAA, Superfund, or RCRA. One commenter also noted that these secondary impacts also affect the water supply industry by increasing the waste and disposal costs of treatment. EPA is aware of this issue and did include the cost of disposal in the Regulatory Impact Analysis accompanying the January 30, 1991 final rule.

As stated earlier, EPA did not reconsider the costs for the proposed VOC monitoring requirements because those costs were considered in the final Phase II rule promulgated on January 30, 1991. The costs of today's VOC monitoring requirements have virtually no impact on the total cost of VOC monitoring primarily because a single analytical method can analyze a range of contaminants. Sampling for all VOC contaminants can be conducted at the same time.

TABLE 1.—REGULATORY IMPACT

Contaminant	Systems in violation	Annual treatment cost ($million/yr)	Typical HH [1] treatment cost/system/year		
			Small [2]	Medium [3]	Large [4]
Aldicarb (including sulfoxide and sulfone)	378	$6.7	600	39	10–14
Pentachlorophenol	825	$19	600	39	10

TABLE 1.—REGULATORY IMPACT—Continued

Contaminant	Systems in violation	Annual treatment cost ($million/yr)	Typical HH [1] treatment cost/system/year		
			Small [2]	Medium [3]	Large [4]
Barium	0	0	[5] $230–460	[5] $54–160	[5] $26–110

[1] HH = household.
[2] Small system serving 25–100 people.
[3] Medium system serving 10,000–25,000 people. For Barium medium system serves 3,300–10,000 people.
[4] Large systems serving more than 1,000,000 people.
[5] Cost dependent upon BAT chosen.

We estimate that approximately 280,000 people will experience reduced exposure to aldicarb, aldicarb sulfoxide and aldicarb sulfone. Approximately 960,000 people will have reduced exposure to pentachlorophenol.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to consider the effect of regulations on small entities. 5 U.S.C. 602 *et seq.* If there is a significant effect on a substantial number of small systems, the Agency must prepare a Regulatory Flexibility Analysis which describes significant alternatives which would minimize the impact on small entities. An analysis of the impact on small systems due to the MCL for aldicarb is included in the RIA which supported the final Phase II rule promulgated January 30, 1991. The Administrator has determined that the proposed rule, if promulgated, will not have a significant effect on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* as part of the information collection requirements supporting the final Phase II rule on January 30, 1991. The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

List of Subjects in 40 CFR Parts 141, 142, and 143

Chemicals, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: June 17, 1991.

William K. Reilly,

Administrator, Environmental Protection Agency.

For the reasons set forth in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. In § 141.6, paragraph (a) is revised and paragraph (g) is added to read as follows:

§ 141.6 Effective dates.

(a) Except as provided in paragraphs (b) through (g) of this section, the regulations set forth in this part shall take effect on June 24, 1977.

* * * * *

(g) The regulations contained in Section 141.6, paragraph (c) of the table in 141.12, and 141.62(b)(1) are effective July 1, 1991. The regulations contained in §§ 141.11(b), 141.23, 141.24, 142.57(b), 143.4(b)(12) and (b)(13), are effective July 30, 1992. The regulations contained in the revisions to §§ 141.32(e)(16), (25) through (27) and (46); 141.50(a)(15), (b)(4), (b)(5) and (b)(6); 141.51(b)(3); 141.61(c)(2), (c)(3), (c)(4) and (c)(16); 141.62(b)(3) are effective January 1, 1993.

3. Section 141.11 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

* * * * *

(b) The Maximum contaminant levels for cadmium, chromium, mercury, nitrate and selenium shall remain effective until July 30, 1992; the maximum contaminant level for lead shall remain effective until December 7, 1992; the maximum contaminant level for barium shall remain effective until January 1, 1993.

* * * * *

4. In § 141.12, paragraph (c) in the table is revised to read as follows:

§ 141.12 Maximum contaminant levels for organic chemicals.

* * * * *

	Level milligrams per liter
(c) Total trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform))	0.10

* * * * *

5. Section 141.23 which was published January 30, 1991 (56 FR 3526) and which will become effective July 30, 1992, is amended by revising paragraphs (a)(4)(i) (excluding the table) and (i)(1); revising the table in (k)(1); revising paragraph (k)(2); revising the table in (k)(4); revising the table in (k)(5)(ii); and adding paragraphs (l), (m), (n), (o), (p), and (q) to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(a) * * *

(4) * * *

(i) If the concentration in the composite sample is greater than or equal to the detection limit of any inorganic chemical, then a follow-up sample must be analyzed within 14 days from each sampling point included in the composite. These samples must be analyzed for the contaminants which were detected in the composite sample. Detection limits for each analytical method are the following:

* * * * *

(i) * * *

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for asbestos, barium, cadmium, chromium, flouride, mercury, and selenium is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall

be calculated at zero for the purpose of determining the annual average.

* * * * *

(k) Inorganic analysis:

(1) * * *

INORGANIC CONTAMINANTS ANALYTICAL METHODS

Contaminant	Methodology [11]	EPA [1]	Reference (Method No.)		
			ASTM [2]	SM [3]	Other
Asbestos	Transmission Electron Microscopy	EPA [9]			
Barium	Atomic absorption; furnace technique	208.2		304	
	Atomic absorption; direct aspiration	208.1		303C	
	Inductively-coupled plasma	200.7 [4,6]			
Cadmium	Atomic absorption; furnace technique	213.2		304	
	Inductively-coupled plasma	200.7A [6]			
Chromium	Atomic absorption; furnace technique	218.2		304 [7]	
	Inductively-coupled plasma	200.7 [4,6]			
Mercury	Manual cold vapor technique	245.1	D3223-86	303F	
	Automated cold vapor technique	245.2			
Nitrate	Manual cadmium reduction	353.3	D3867-90	418C	
	Automated hydrazine reduction	353.1			
	Automated cadmium reduction	353.2	D3867-90	418F	
	Ion selective electrode				WeWWG/5880 [5]
	Ion chromatography	300.0			B-1011 [10]
Nitrite	Spectrophotometric	354.1			
	Automated cadmium reduction	353.2	D3867-90	418F	
	Manual cadmium reduction	353.3	D3867-90	418C	
	Ion chromatography	300.0			B-1011 [10]
Selenium	Atomic absorption; gaseous hydride				
	Atomic absorption; furnace technique	270.2	D3859-88	304 [8]	

[1] Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 (EPA-600/4-79-020), March 1983. Available from ORD Publications, CERI, EPA, Cincinnati, OH 45268.

[2] Annual Book of ASTM Standards, Vol. 11.01 American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

[3] "Standard Methods for the Examination of Water and Wastewater," 16th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

[4] "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the U.S. Geological Survey Books, Chapter A1, 1989, Open-File Report 85-495. Available from Open-File Services Section, Western Distribution Branch, U.S. Geological Survey, MS 306 Box 24525, Denver Federal Center, Denver, CO 80225.

[5] "Orion Guide to Water and Wastewater Analysis." Form WeWWG/5880, p. 5, 1985. Orion Research, Inc., Cambridge, MA.

[6] 200.7A "Inductively-Coupled Plasma Atomic Emission Analysis of Drinking Water," Appendix to Method 200.7, March, 1987, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268.

[7] The addition of 1 mL of 30% H_2O_2 to each 100 mL of standards and samples is required before analysis.

[8] Prior to dilution of the Se calibration standard, add 2 mL of 30% H_2O_2 for each 100 mL of standard.

[9] "Analytical Method for Determination of Asbestos Fibers in Water," EPA-600/4-83-043, September 1983, U.S. EPA, Environmental Research Laboratory, Athens, GA 30613.

[10] "Waters Test Method for the Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography, Method B-1011, Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[11] For approved analytical procedures for metals, the technique applicable to total metals must be used.

(2) Analyses for arsenic shall be conducted using the following methods: Method [1] 206.2, Atomic Absorption Furnace Technique; or Method [1] 206.3, or Method [4] D2972-88B, or Method [2] 307A, or Method [3] I-1062-85, Atomic Absorption—Gaseous Hydride; or Method [1] 206.4, or Method [4] D-2972-88A, or Method [2] 307B, Spectrophotometric, Silver Diethyldithiocarbamate; or Method 200.7A, Inductively Coupled Plasma Technique [5].

* * * * *

(k)(4) * * *

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA-600/4-79-020), March 1979. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[2] "Standard Methods for the Examination of Water and Wastewater," 16th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

[3] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A-1, "Methods for Determiantion of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #014-001-03177-9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[4] Annual Book of ASTM Standards, part 31 Water, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

[5] Appendix to Method 200.7, March 1987, U.S. EPA, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268.

Contaminant	Preservative	Container [2]	Time [3]
Asbestos	Cool, 4°C	P or G	
Barium [1]	Con HO_3 to pH <2	P or G	6 months.
Cadmium [1]	Con HO_3 to pH <2	P or G	6 months.
Chromium [1]	Con HO_3 to pH <2	P or G	6 months.
Fluoride [1]	None	P or G	1 month.
Mercury [1]	Con HO_3 to pH <2	P or G	28 days.
Nitrate:			
Chlorinated	Cool, 4°C	P or G	28 days.
Non-chlorinated	Con H_2SO_4 to pH <2	P or G	14 days.
Nitrite	Cool, 4°C	P or G	48 hours.

Contaminant	Preservative	Container [2]	Time [3]
Selenium [1]	Con HNO_3 to pH <2	P or G	6 months.

[1] If HNO_3 cannot be used because of shipping restrictions, sample may be initially preserved by icing and immediately shipping it to the laboratory. Upon receipt in the laboratory, the sample must be acidified with con HO_3 to pH <2. At time of analysis, sample container should be thoroughly rinsed with 1:1 HNO_3; washings should be added to sample.
[2] P=plastic, hard or soft; G=glass, hard or soft.
[3] In all cases, samples should be analyzed as soon after collection as possible.

(5) * * *
(i) * * *
(ii) * * *

Contaminant	Acceptance limit
Asbestos	2 standard deviations based on study statistics
Barium	±15% at ≥0.15 mg/l
Cadmium	±20% at ≥0.002 mg/l
Chromium	±15% at ≥0.01 mg/l
Fluoride	±10% at 1 to 10 mg/l
Mercury	±30% at ≥0.0005 mg/l
Nitrate	±10% at ≥0.4 mg/l
Nitrite	±15% at ≥0.4 mg/l
Selenium	±20% at ≥0.01 mg/l

* * * * *

(l) Analyses for the purpose of determining compliance with § 141.11 shall be conducted using the requirements specified in paragraphs (l) through (q) of this section.

(1) Analyses for all community water systems utilizing surface water sources shall be completed by June 24, 1978. These analyses shall be repeated at yearly intervals.

(2) Analyses for all community water systems utilizing only ground water sources shall be completed by June 24, 1979. These analyses shall be repeated at three-year intervals.

(3) For non-community water systems, whether supplied by surface or ground sources, analyses for nitrate shall be completed by December 24, 1980. These analyses shall be repeated at intervals determined by the State.

(4) The State has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(m) If the result of an analysis made under paragraph (l) of this section indicates that the level of any contaminant listed in § 141.11 exceeds the maximum contaminant level, the supplier of the water shall report to the State within 7 days and initiate three additional analyses at the same sampling point within one month.

(n) When the average of four analyses made pursuant to paragraph (m) of this section, rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall notify the State pursuant to § 141.31 and give notice to the public pursuant to § 141.32. Monitoring after public notification shall be at a frequency designated by the State and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(o) The provisions of paragraphs (m) and (n) of this section notwithstanding, compliance with the maximum contaminant level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within 24 hours, and if the mean of the two analyses exceeds the maximum contaminant level, the supplier of water shall report his findings to the State pursuant to § 141.31 and shall notify the public pursuant to § 141.32.

(p) For the initial analyses required by paragraph (l) (1), (2) or (3) of this section, data for surface waters acquired within one year prior to the effective date and data for ground waters acquired within 3 years prior to the effective date of this part may be substituted at the discretion of the State.

(q) Analyses conducted to determine compliance with § 141.11 shall be made in accordance with the following methods, or their equivalent as determined by the Administrator.

(1) Arsenic-Method [1] 206.2, Atomic Absorption Furnace Technique; or Method [1] 206.3, or Method [4] D2972–88B or Method [2] 307A, or Method [3] I–1062–85, Atomic Absorption—Gaseous Hydride; or Method [1] 206.4, or Method [4] D–2972–88A, or Method [2] 307B, Spectrophotometric, Silver Diethyldithiocarbamate; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(2) Barium-Method [1] 208.1 or Method [2] 308, Atomic Absorption—Direct Aspiration; or Method [1] 208.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

(3) Cadmium-Method [1] 213.1 or Method [4] D 3557–78A or B, or Method [2] 310A, Atomic Absorption—Direct Aspiration; or Method [1] 213.2 Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupledd Plasma Technique.

(4) Chromium-Method [1] 218.1 or Method [4] D 1687–77D, or Method [2] 312A, Atomic Absorption—Direct Aspiration; or Chromium-Method [1] 218.2 Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Couple Plasma Technique.

(5) Mercury-Method [1] 245.1, or Method [4] D–3223–69, or Method [2] 320A, Manual Cold Vapor Technique; or Method [1] 245.2, Automated Cold Vapor Technique.

(6) Nitrate-Method [1] 352.1, or Method [4] D–992–71, or Method [1] 353.3, or Method [4] D–3867–79B, or Method [2] 418–C, Spectrometric, Cadmium Reduction; Method [1] 353.1, Automated Hydrazine Reduction; or Method [1] 353.2, or Method [4] D–3867–79A, or Method [2] 418F, Automated Cadmium Reduction.

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/4–79–020), March 1983. Available from ORD Publications, CERI, EPA, Cincinnati, Ohio 45268. For approved analytical procedures for metals, the technique applicable to total metals must be used.

[2] "Standard Methods for the Examination of Water and Wastewater." 16th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1985.

[3] Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter A–1, "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," Book 5, 1979, Stock #024–001–03177–9. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[4] Annual Book of ASTM Standards, part 31 Water, American Society for Testing and Materials, 1976 Race Street, Philadelphia, Pennsylvania 19103.

[5 7] [Reserved].

[8] "Inductively Coupled Plasma-Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes—Method 200.7" with Appendix to Method 200.7 entitled, "Inductively Coupled Plasma-Atomic Emission Analysis of Drinking Water." March 1987. Available from EPA's Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268.

(7) Selenium-Method [1] 270.2, Atomic Absorption Furnace Technique; or Method [1] 270.3; or Method [3] I–1667–85, or Method [4] D–3859–79, or Method [2] 303F, Hydride Generation—Atomic Absorption Spectrophotometry.

(8) Lead-Method [1] 239.1 or Method [4] D3559–78A or B, or Method [2] 301–A II or III, pp. 148–152, Atomic Absorption—Direct Aspiration; or Method [1] 239.2, Atomic Absorption Furnace Technique; or Method [8] 200.7, Inductively Coupled Plasma Technique.

6. In § 141.24, which was published January 30, 1991 (56 FR 3526) and which will become effective July 30, 1992, paragraphs (e) and (f) are revised; paragraphs (h)(8), (h)(12) (iv), (vi), (vii), and (h)(13)(i) are revised; and paragraph (h)(19) is added to read as set forth below. In addition, paragraph (g), which was not affected by the Jan. 30, 1991 amendment, is amended by revising paragraph (g) introductory text and adding (g)(8) to become effective July 30, 1992.

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(e) Analysis made to determine compliance with the maximum contaminant level for endrin in § 141.12(a) shall be made in accordance with EPA Methods 505, "Analysis of Organohalide Pestcides and Commercial Polychlorinated Biphenyl Products (Aroclors) in Water by Microextraction and Gas Chromatography" and 508, "Determination of Chlorinated Pesticides in Water by Gas Chromatography With an Electron Capture Detector." The Methods are contained in "Methods for the Determination of Organic Compounds in Drinking Water," ORD Publications, CERI, EPA/600/4–88/039, December 1988. These methods are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is 1–800–336–4700.

(f) Beginning on January 1, 1993, analysis of the contaminants listed in § 141.61(a) (1) through (18) for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(2) Surface water systems (or combined surface/ground) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a) (2) through (18) during each compliance period, beginning in the compliance period starting January 1, 1993.

(5) If the initial monitoring for contaminants listed in § 141.61(a) (1) through (8) and the monitoring for the contaminants listed in § 141.61(a) (9) through (18) as allowed in paragraph (f)(18) has been completed by December 31, 1992, and the system did not detect any contaminant listed in § 141.61(a) (1) through (18), then each ground and surface water system shall take one sample annually beginning January 1, 1993.

(6) After a minimum of three years of annual sampling, the State may allow groundwater systems with no previous detection of any contaiminant listed in § 141.61(a) to take one sample during each compliance period.

(7) Each community and non-transient groundwater system which does not detect a contaminant listed in § 141.61(a) (1) through (18) may apply to the State for a waiver from the requirements of paragraphs (f)(5) and (f)(6) of this section after completing the initial monitoring. (For the purposes of this section, detection is defined as $\geq$0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods).

(8) A State may grant a waiver after evaluating the following factor(s):

(i) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the State reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(ii) If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

(A) Previous analytical results.

(B) The proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(C) The environmental persistence and transport of the contaminants.

(D) The number of persons served by the public water system and the proximity of a smaller system to a larger system.

(E) How well the water source is protected against contamination, such as whether it is a surface or groundwater system. Groundwater systems must consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver a groundwater system must take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its vulnerability assessment considering the factors listed in paragraph (f)(8) of this section. Based on this vulnerability assessment the State must reconfirm that the system is non-vulnerable. If the State does not make this reconfirmation within three years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in paragraph (5) of this section.

(10) Each community and non-transient surface water system which does not detect a contaminant listed in § 141.61(a) (1) through (18) may apply to the State for a waiver from the requirements of (f)(5) of this section after completing the initial monitoring. Systems meeting this criteria must be determined by the State to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the State (if any).

(11) If a contaminant listed in § 141.61(a) (2) through (18) is detected at a level exceeding 0.0005 mg/l in any sample, then:

(i) The system must monitor quarterly at each sampling point which resulted in a detection.

(ii) The State may decrease the quarterly monitoring requirement specified in paragraph (f)(11)(i) of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the State make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(iii) If the State determines that the system is reliably and consistently below the MCL, the State may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter(s) which previously yielded the highest analytical result.

(iv) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the State for a waiver as specified in paragraph (f)(7) of this section.

(v) Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the State may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the State.

(12) Systems which violate the requirements of § 141.61(a) (1) through (18), as determined by paragraph (f)(15) of this section, must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (f)(15) of this section the system and the State determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and time specified in paragraph (f)(11)(iii) of this section.

(13) The State may require a confirmation sample for positive or negative results. If a confirmation sample is required by the State, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (f)(15). States have discretion to delete results of obvious sampling errors from this calculation.

(14) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(i) If the concentration in the composite sample is $\geq$ 0.0005 mg/l for any contaminant listed in § 141.61(a), then a follow-up sample must be taken and analyzed within 14 days from each sampling point included in the composite.

(ii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the State within 14 days of collection.

(iii) Compositing may only be permitted by the State at sampling points within a single system, unless the population served by the system is $\geq$ 3,300 persons. In systems serving $\geq$ 3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

(iv) Compositing samples prior to GC analysis.

(A) Add 5 ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25 ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

(B) The samples must be cooled at 4°C during this step to minimize volatilization losses.

(C) Mix well and draw out a 5-ml aliquot for analysis.

(D) Follow sample introduction, purging, and desorption steps described in the method.

(E) If less than five samples are used for compositing, a proportionately small syringe may be used.

(v) Compositing samples prior to GC/MS analysis.

(A) Inject 5-ml or equal larger amounts of each aqueous sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

(B) The total volume of the sample in the purging device must be 25 ml.

(C) Purge and desorb as described in the method.

(15) Compliance with § 141.61(a) (1) through (18) shall be determined based on the analytical results obtained at each sampling point.

(i) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.

(ii) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the State, the determination of compliance will be based on the average of two samples.

(iii) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

(16) Analysis for the contaminants listed in § 141.61(a) (1) through (18) shall be conducted using the following EPA methods or their equivalent as approved by EPA. These methods are contained in Methods for the Determination of Organic Compounds in Drinking Water, ORD Publications, CERI, EPA/600/4-88/039, December 1988. These documents are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800-336-4700.

(i) Method 502.1, "Volatile Halogenated Organic Chemicals in Water by Purge and Trap Gas Chromatography."

(ii) Method 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series."

(iii) Method 503.1, "Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography."

(iv) Method 524.1, "Measurement of Purgeable Organic Compounds in Water by Purged Column Gas Chromatography/Mass Spectrometry."

(v) Method 524.2, "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry."

(17) Analysis under this section shall only be conducted by laboratories that are certified by EPA or the State according to the following conditions:

(i) To receive certification to conduct analyses for the contaminants in

§ 141.61(a) (2) through (18) the laboratory must:

(A) Analyze Performance Evaluation samples which include these substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) Achieve the quantitative acceptance limits under paragraphs (f)(17(i) (C) and (D) of this section for at least 80 percent of the regulated organic chemicals listed in § 141.61(a) (2) through (18).

(C) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±20 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

(D) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±40 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is less than 0.010 mg/l.

(E) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(ii) To receive certification for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation samples provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses performed under paragraph (f)(17)(ii)(A) of this section that are within ±40 percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

(C) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(D) Obtain certification for the contaminants listed in § 141.61(a) (2) through (18).

(18) States may allow the use of monitoring data collected after January 1, 1988, required under section 1445 of the Act for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements in this section, the State may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph (f)(4) of this section. Systems which use grandfathered samples and did not detect any contaminant listed in § 141.61(a) (1) through (18) shall begin monitoring annually in accordance with paragraph (f)(5) of this section beginning January 1, 1993.

(19) States may increase required monitoring where necessary to detect variations within the system.

(20) Each approved laboratory must determine the method detection limit (MDL), as defined in appendix B to part 136, at which it is capable of detecting VOCs. The acceptable MDL is 0.0005 mg/l. This concentration is the detection concentration for purposes of this section.

(21) Each public water system shall monitor at the time designated by the State within each compliance period.

(g) For systems in operation before January 1, 1993, for purposes of initial monitoring, analysis of the contaminants listed in § 141.61(a) (1) through (8) for purposes of determining compliance with the maximum contaminant levels shall be conducted as follows:

* * * * *

(8) Until January 1, 1993, the State may reduce the monitoring frequency in paragraphs (g)(1) and (g)(2) of this section, as explained in this paragraph.

* * * * *

(h) * * *

(8) Systems which violate the requirements of § 141.61(c) as determined by paragraph (h)(11) of this section must monitor quarterly. After a minimum of four quarterly samples show the system is in compliance and the State determines the system is reliably and consistently below the MCL, as specified in paragraph (h)(11) of this section, the system shall monitor at the frequency specified in paragraph (h)(7)(iii) of this section.

* * * * *

(12) * * *

(iv) Method 508, "Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector." Method 508 can be used to measure chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor and toxaphene. Method 508 can be used as a screen for PCBs.

* * * * *

(vi) Method 515.1, Revision 5.0, "Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector" as revised May 1991. Method 515.1 can be used to measure 2,4-D, 2,4,5-TP (Silvex) and pentachlorophenol.

(vii) Method 525.1, Revision 3.0 "Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry" as revised May 1991. Method 525.1 can be used to measure alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, and pentachlorophenol.

(13) * * *

(i) Each system which monitors for PCBs shall analyze each sample using either Method 505 or Method 508 (see paragraph (h)(12) of this section).

* * * * *

(19) Anaylsis under this section shall only be conducted by laboratories that have received certification by EPA or the State and have met the following conditions:

(i) To receive certification to conduct analyses for the contaminants in § 141.61(c) the laboratory must:

(A) Analyze Performance Evaluation samples which include those substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limits (percent)
DBCP	± 40.
EDB	± 40.
Alachlor	± 45.
Atrazine	± 45.
Carbofuran	± 45.
Chlordane	± 45.
Heptachlor	± 45.
Heptachlor Epoxide	± 45.
Lindane	± 45.
Methoxychlor	± 45.
PCBs (as Decachlorobiphenyl).	0–200.
Toxaphene	± 45.
Aldicarb	2 standard deviations.
Aldicarb sulfoxide	2 standard deviations.
Aldicarb sulfone	2 standard deviations.
Pentachlorophenol	± 50.
2,4-D	± 50.
2,4-TP	± 50.

(ii) [Reserved]

7. In § 141.32, paragraphs (e)(16), (25) through (27), and (46) are added to read as follows:

§ 141.32 Public notification.

* * * * *

(e) * * *

(16) *Barium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of ground water. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system, and is associated with high blood pressure in laboratory animals such as rats exposed

to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below 2 parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at 2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

* * * * *

(25) *Aldicarb.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

(26) *Aldicarb sulfoxide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in ground water is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfoxide may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

(27) *Aldicarb sulfone.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name aldoxycarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

* * * * *

(46) *Pentachlorophenol.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals such as rats exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the liver and kidneys. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol.

8. Section 141.50 is amended by adding paragraphs (a)(15), (b)(4), (b)(5), and (b)(6) to read as follows:

§ 141.50 Maximum contaminant level goals for organic chemicals.

(a) * * *

(15) Pentachlorophenol

(b) * * *

Contaminant	MCLG (mg/l)
* * * * *	
(4) Aldicarb	0.001
(5) Aldicarb sulfoxide	0.001
(6) Aldicarb sulfone	0.001

* * * * *

9. Section 141.51 is amended by adding paragraph (b)(3) as follows:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

* * * * *

(b) * * *

Contaminant	MCLG (mg/l)
* * * * *	
(3) Barium	2
* * * * *	

10. Section 141.61 is amended by adding to the table paragraphs (c)(2), (c)(3), (c)(4), and (c)(16) to read as follows:

§ 141.61 Maximum contaminant levels for organic contaminants.

* * * * *

(c) * * *

CAS No.	Contaminant	MCL (mg/l)
* * * * *		
(2) 116-06-3	Aldicarb	0.003
(3) 1646-87-3	Aldicarb sulfoxide	0.004
(4) 1646-87-4	Aldicarb sulfone	0.003
* * * * *		
(16) 87-86-5	Pentachlorophenol	0.001

* * * * *

11. In § 141.62, paragraph (b)(1) is revised and (b)(3) is added to read as follows:

§ 141.62 Maximum contaminant levels for inorganic contaminants.

* * * * *

(b) * * *

Contaminant	MCL (mg/l)
(1) Fluoride	4.0
* * * * *	
(3) Barium	2
* * * * *	

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

12. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

13. In § 142.57, which was published January 30, 1991 (56 FR 3526) and will become effective July 30, 1992, paragraph (b) is revised to read as follows:

§ 142.57 Bottled Water, Point-of-Use.

* * * * *

(b) Public water systems using bottled water as a condition of obtaining an exemption from the requirements of §§ 141.61 (a) and (c) and § 141.62(b) must meet the requirements in § 142.62(g).

* * * * *

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

14. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300g–1(c), 300j–4 and 300j–9.

15. In § 143.4, which was published January 30, 1991 (56 FR 3526) and which will become effective July 30, 1992, paragraphs (b) (12) and (13) are revised to read as follows:

§ 143.4 Monitoring.

* * * * *

(b) * * *

(12) Aluminum—Method [1] 202.1 Atomic Absorption Technique-Direct Aspiration; or Method [2] 306A; or Method [3] I–305i–85, or Method [1] 202.2 Atomic Absorption-Graphite Furnace Technique; or Method [2] 304; or Method [4] 200.7 Inductively-Coupled Plasma Technique; or Method [5] 200.8 Inductively Coupled Plasma-Mass Spectrometry or Method [6] 200.9 Platform Technique; or Method [7] 3120B Inductively-Coupled Plasma Technique.

(13) Silver—Method [1] 272.1 Atomic Absorption Technique-Direct Aspiration; or Method [2] 324A; or Method [3] I–3720–85; or Method [1] 272.2 Atomic Absorption-Graphite Furnace Technique; or Method [2] 304; or Method [4] 200.7 Inductively-Coupled Plasma-Technique; or Method [5] 200.8 Inductively-Coupled Plasma-Mass Spectrometry; or Method [6] 200.9 Platform Technique; or Method [7] 3120B Inductively-Coupled Plasma-Technique.

[FR Doc. 91–15564 Filed 6–28–91; 8:45 am]

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[1] "Methods of Chemical Analysis of Water and Wastes," EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268. EPA 600/4–79–020, March, 1983. Available from ORD Publication, CERI, EPA, Cincinnati, OH 45268.

[2] "Standard Methods for the Examination of Water and Wastewater," 16th Ed., American Public Health Association, American Waterworks Association, Water Pollution Control Federation, 1985.

[3] "Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the United States Geological Survey Books, Chapter A1, 1985. Available from Open File Services Section, Western Distribution Branch, U.S. Geological Survey, Denver Federal Center, Denver, CO 80255.

[4] "Determination of Metals and Trace Elements by Inductively Coupled Plasma-Atomic Emission Spectrometry," Method 200.7, version 3.2, August, 1990, EPA Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

[5] "Determination of and Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Method 200.8, version 4.3, August, 1990, EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268. Available from ORD Publication, CERI, EPA, Cincinnati, OH 45268.

[6] "Determination of Metals and Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," Method 200.9, version 1.1, August, 1990, EPA, Environmental Monitoring and Systems Laboratory, Cincinnati, OH 45268.

[7] "Standard Methods for the Examination of Water and Wastewater," 16th ed., American Public Health Association, American Waterworks Association, Water Pollution Control Federation, 1985.

federal register

Monday
July 1, 1991

Part XIII

The President

Executive Order 12767—Amendments to the Manual for Courts-Martial, United States, 1984

Executive Order 12768—Extension of the President's Council of Advisors on Science and Technology

Proclamation 6310—To Make Changes to the Harmonized Tariff Schedule of the United States

EXECUTIVE ORDER 12767
AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984

By the authority vested in me as President by the Constitution of the United States of America and by chapter 47 of title 10 of the United States Code (Uniform Code of Military Justice), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, and Executive Order No. 12708, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g)(1)(A) is amended to read as follows:

"(A) *Witnesses.* Except as provided in subsection (g)(4)(A) of this rule, any witness whose testimony would be relevant to the investigation and not cumulative shall be produced if reasonably available. This includes witnesses requested by the accused, if the request is timely. A witness is 'reasonably available' when the witness is located within 100 miles of the situs of the investigation and the significance of the testimony and personal appearance of the witness outweighs the difficulty, expense, delay, and effect on military operations of obtaining the witness' appearance. A witness who is unavailable under Mil. R. Evid. 804(a)(1)-(6) is not 'reasonably available.'".

b. R.C.M. 405(g)(4)(B) is amended --

(1) in clause (iii) to read as follows:

"(iii) Prior testimony under oath;";

(2) in clause (iv) to read as follows:

"(iv) Depositions of that witness; and"; and

(3) by adding the following clause at the end thereof:

"(v) In time of war, unsworn statements.".

c. R.C.M. 701(a)(3)(B) is amended to read as follows:

"(B) To rebut a defense of alibi, innocent ingestion, or lack of mental responsibility, when trial counsel has received timely notice under subsection (b)(1) or (2) of this rule.".

d. R.C.M. 701(b) is amended --

(1) in subparagraph (1) to read as follows:

"(1) *Names of witnesses and statements.*

(A) Before the beginning of trial on the merits, the defense shall notify the trial counsel of the names and addresses of all witnesses, other than the accused, whom the defense intends to call during the defense case in chief, and provide all sworn or signed statements known by the defense to have been made by such witnesses in connection with the case.

(B) Upon request of the trial counsel, the

defense shall also

(1) provide the trial counsel with the names and addresses of any witnesses whom the defense intends to call at the presentencing proceedings under R.C.M. 1001(c); and

(2) permit the trial counsel to inspect any written material that will be presented by the defense at the presentencing proceeding.";

(2) in subparagraph (2) to read as follows:

"(2) *Notice of certain defenses.* The defense shall notify the trial counsel before the beginning of trial on the merits of its intent to offer the defense of alibi, innocent ingestion, or lack of mental responsibility, or its intent to introduce expert testimony as to the accused's mental condition. Such notice by the defense shall disclose, in the case of an alibi defense, the place or places at which the defense claims the accused to have been at the time of the alleged offense, and, in the case of an innocent ingestion defense, the place or places where, and the circumstances under which the defense claims the accused innocently ingested the substance in question, and the names and addresses of the witnesses upon whom the accused intends to rely to establish any such defenses."; and

(3) in subparagraph (5) to read as follows:

"(5) *Inadmissibility of withdrawn defense.* If an intention to rely upon a defense under subsection (b)(2) of

this rule is withdrawn, evidence of such intention and disclosures by the accused or defense counsel made in connection with such intention is not, in any court-martial, admissible against the accused who gave notice of the intention.".

e. R.C.M. 705(c)(2) is amended by deleting the first sentence and substituting therefor the following sentence:

"(2) *Permissible terms or conditions.* Subject to subsection (c)(1)(A) of this rule, subsection (c)(1)(B) of this rule does not prohibit either party from proposing the following additional conditions:".

f. R.C.M. 705(d) is amended --

(1) by deleting subparagraph (1);

(2) by redesignating subparagraph (2) as subparagraph (1) and amending it to read as follows:

"(1) *Negotiation.* Pretrial agreement negotiations may be initiated by the accused, defense counsel, trial counsel, the staff judge advocate, convening authority, or their duly authorized representatives. Either the defense or the government may propose any term or condition not prohibited by law or public policy. Government representatives shall negotiate with defense counsel unless the accused has waived the right to counsel.";

(3) by redesignating subparagraph (3) as subparagraph (2) and amending it to read as follows:

"(2) *Formal submission.* After negotiation, if any, under subsection (d)(1) of this rule, if the accused elects to propose a pretrial agreement, the defense shall submit a written offer. All terms, conditions, and promises between the parties shall be written. The proposed agreement shall be signed by the accused and defense counsel, if any. If the agreement contains any specified action on the adjudged sentence, such action shall be set forth on a page separate from the other portions of the agreement.";

(4) by redesignating subparagraph (4) as subparagraph (3) and amending it to read as follows:

"(3) *Acceptance.* The convening authority may either accept or reject an offer of the accused to enter into a pretrial agreement, or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority. When the convening authority has accepted a pretrial agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign."; and

(5) by redesignating subparagraph (5) as subparagraph (4).

g. R.C.M. 707 is amended to read as follows:

"Rule 707. Speedy trial

(a) In general. The accused shall be brought to trial within 120 days after the earlier of:

(1) Preferral of charges;

(2) The imposition of restraint under R.C.M. 304(a)(2)-(4); or,

(3) Entry on active duty under R.C.M. 204.

(b) Accountability.

(1) *In general.* The date of preferral of charges, the date on which pretrial restraint under R.C.M. 304(a)(2)-(4) is imposed, or the date of entry on active duty under R.C.M. 204 shall not count for the purpose of computing time under subsection (a) of this rule. The date on which the accused is brought to trial shall count. The accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904.

(2) *Multiple charges.* When charges are preferred at different times, accountability for each charge shall be determined from the appropriate date under subsection (a) of this rule for that charge.

(3) *Events which affect time periods.*

(A) *Dismissal or mistrial.* If charges are dismissed, or if a mistrial is granted, a new 120-day time period under this rule shall begin on the date of dismissal or mistrial for cases in which there is no repreferral and cases in which the accused is in pretrial restraint. In all other cases, a new 120-day time period under this rule shall begin on the earlier of

(i) the date of repreferral;

(ii) the date of imposition of restraint under R.C.M. 304(a)(2)-(4).

(B) *Release from restraint.* If the accused is released from pretrial restraint for a significant period, the 120-day time period under this rule shall begin on the earlier of

(i) the date of preferral of charges;

(ii) the date on which restraint under R.C.M. 304(a)(2)-(4) is reimposed; or

(iii) the date of entry on active duty under R.C.M. 204.

(C) *Government appeals.* If notice of appeal under R.C.M. 908 is filed, a new 120-day time period under this rule shall begin, for all charges neither proceeded on nor severed under R.C.M. 908(b)(4), on the date of notice to the parties under R.C.M. 908(b)(8) or 908(c)(3), unless it is determined that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. After the decision of the Court of Military Review under R.C.M. 908, if there is a further appeal to the Court of Military Appeals or, subsequently, to the Supreme Court, a new 120-day time period under this rule shall begin on the date the parties are notified of the final decision of the Court of Military Appeals or, if appropriate, the Supreme Court.

(D) *Rehearings.* If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority receives the record of trial and the opinion authorizing or directing a rehearing.

(c) Excludable delays. All periods of time covered by stays issued by appellate courts and all other pretrial delays approved by a military judge or the convening authority shall be excluded when determining whether the period in subsection (a) of this rule has run.

(1) Procedure. Prior to referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority or, if authorized under regulations prescribed by the Secretary concerned, to a military judge for resolution. After referral, such requests for pretrial delay will be submitted to the military judge for resolution.

(2) Motions. Upon accused's timely motion to a military judge under R.C.M. 905 for speedy trial relief, counsel should provide the court a chronology detailing the processing of the case. This chronology should be made part of the appellate record.

(d) Remedy. A failure to comply with the right to a speedy trial will result in dismissal of the affected charges. This dismissal will be with or without prejudice to the government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the

accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a reprosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial.

(e) Waiver. Except as provided in R.C.M. 910(a)(2), a plea of guilty which results in a finding of guilty waives any speedy trial issue as to that offense.".

h. R.C.M. 802(c) is amended to read as follows:

"(c) *Rights of Parties.* No party may be prevented under this rule from presenting evidence or from making any argument, objection, or motion at trial.".

i. R.C.M. 908(b)(4) is amended to read as follows:

"(4) *Effect on the court-martial.* Upon written notice to the military judge under subsection (b)(3) of this rule, the ruling or order that is the subject of the appeal is automatically stayed and no session of the court-martial may proceed pending disposition by the Court of Military Review of the appeal, except that solely as to charges and specifications not affected by the ruling or order:".

j. R.C.M. 908(b) is amended by inserting the following new subparagraph at the end thereof:

"(9) *Pretrial confinement of accused pending appeal.* If an accused is in pretrial confinement at the time the United States files notice of its intent to appeal under subsection (3) above, the commander, in determining whether the accused should be confined pending the outcome of an appeal by the United States, should consider the same factors which would authorize the imposition of pretrial confinement under R.C.M. 305(h)(2)(B).".

k. R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That, only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, robbery, or aggravated arson was major and who manifested a reckless indifference for human life;".

l. R.C.M. 1010 is amended to read as follows:

"In each general and special court-martial, prior to adjournment, the military judge shall ensure that the defense counsel has informed the accused orally and in writing of:

a. The right to submit matters to the convening authority to consider before taking action;

b. The right to appellate review, as applicable, and the effect of waiver or withdrawal of such right;

c. The right to apply for relief from the Judge Advocate General if the case is neither reviewed by a Court

of Military Review nor reviewed by the Judge Advocate General under R.C.M. 1201(b)(1); and

d. The right to the advice and assistance of counsel in the exercise of the foregoing rights or any decision to waive them.

The written advice to the accused concerning post-trial and appellate rights shall be signed by the accused and the defense counsel and inserted in the record of trial as an appellate exhibit.".

m. R.C.M. 1103(b)(2)(D) is amended by --

(1) redesignating clause (iv) as clause (v); and

(2) inserting the following new clause (iv) after clause (iii):

"(iv) The original dated, signed action by the convening authority.".

n. R.C.M. 1107(f)(1) is amended to read as follows:

"(1) *In general.* The convening authority shall state in writing and insert in the record of trial the convening authority's decision as to the sentence, whether any findings of guilty are disapproved, and orders as to further disposition. The action shall be signed personally by the convening authority. The convening authority's authority to sign shall appear below the signature.".

o. R.C.M. 1110(f)(1) is amended to read as follows:

"(1) *Waiver.* The accused may sign a waiver of appellate review at any time after the sentence is announced. The waiver must be filed within 10 days after the accused or defense counsel is served with a copy of the action under R.C.M. 1107(h). Upon written application of the accused, the convening authority may extend this period for good cause, for not more than 30 days."

p. R.C.M. 1113(c)(1) is amended in the final paragraph thereof to read as follows:

"A dishonorable or a bad-conduct discharge may be ordered executed only after a final judgment within the meaning of R.C.M. 1209 has been rendered in the case. If on the date of final judgment a servicemember is not on appellate leave and more than 6 months have elapsed since approval of the sentence by the convening authority, before a dishonorable or a bad-conduct discharge may be executed, the officer exercising general court-martial jurisdiction over the servicemember shall consider the advice of that officer's staff judge advocate as to whether retention of the servicemember would be in the best interest of the service. Such advice shall include the findings and sentence as finally approved, the nature and character of duty since approval of the sentence by the convening authority, and a recommendation whether the discharge should be executed.".

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended by adding the following new rule at the end of Section VII thereof:

"Rule 707. Polygraph Examinations.

(a) Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence.

(b) Nothing in this section is intended to exclude from evidence statements made during a polygraph examination which are otherwise admissible.".

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 4e is amended to read as follows:

"e. *Maximum punishment.* Any person subject to the code who is found guilty of an attempt under Article 80 to commit any offense punishable by the code shall be subject to the same maximum punishment authorized for commission of the offense attempted, except that in no case shall the death penalty be adjudged, nor shall any mandatory minimum punishment provisions apply; and in no case, other than attempted murder, shall confinement exceeding 20 years be adjudged.".

b. Paragraph 19 is amended --

(1) in subparagraph b(4) by adding the following thereto:

"[Note: If the escape was from post-trial confinement, add the following element]

(d) That the confinement was the result of a court-martial conviction.";

(2) in subparagraph c(4)(a) by adding the following thereto:

"For purposes of the aggravating element of post-trial confinement (subparagraph b(4)(d), above) and increased punishment therefor (subparagraph e(4), below), the confinement must have been imposed pursuant to an adjudged sentence of a court-martial and not as a result of pretrial restraint or nonjudicial punishment.";

(3) in subparagraph e by --

(a) amending clause (3) to read as follows:

"(3) *Escape from custody, pretrial confinement, or confinement on bread and water or diminished rations imposed pursuant to Article 15.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.";

(b) adding the following new clause at the end thereof:

"(4) *Escape from post-trial confinement.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.";

(4) in subparagraph f(4) to read as follows:

"(4) *Escape from confinement.*

In that _____ (personal jurisdiction data), having been placed in (post-trial) confinement in (place of confinement), by a person authorized to order accused into confinement did, (at/on board _____ location) (subject-matter jurisdiction data, if required), on or about _____19__, escape from confinement.".

c. Paragraph 35c(2) is amended to read as follows:

"(2) *Operating.* Operating a vehicle includes not only driving or guiding it while in motion, either in person or through the agency of another, but also the manipulation of its controls so as to cause the particular vehicle to move, or the setting of its motive power in action.".

c. Paragraph 57d is amended to read as follows.

"d. *Lesser included offense.* Article 80 -- attempts. .

d. Paragraph 96f is amended to read as follows.

"f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board--location)(subject-matter jurisdiction data, if required), on or about _____, 19__, wrongfully (endeavor to) [impede (a trial by court-martial)(an investigation)(_____)][influence the actions of_____, (a trial counsel of the court-martial)(a defense counsel of the court-martial)(an officer responsible for making a recommendation concerning disposition of charges)(_____)][(influence)(alter) the testimony of

_____ as a witness before a (court-martial)(an investigating officer)(_____)] in the case of _____ by [(promising)(offering)(giving) to the said _____, (the sum of $_____)(_____, of a value of about $_____)][communicating to the said _____ a threat to _____][____], (if)(unless) he/she, the said _____, would [recommend dismissal of the charges against said _____][(wrongfully refuse to testify)(testify falsely concerning _____)(_____)][(at such trial)(before such investigating officer)][_____]."

Sec. 4. These amendments shall take effect on July 6, 1991, subject to the following:

a. The amendments made to Rule for Courts-Martial 1004(c)(8) and paragraphs 4e, 19, and 35c(2) of Part IV shall apply to any offense committed on or after July 6, 1991.

b. Military Rule of Evidence 707 shall apply only in cases in which arraignment has been completed on or after July 6, 1991.

c. The amendments made to Rules for Courts-Martial 701 and 705 shall apply only in cases in which charges are preferred on or after July 6, 1991.

d. The amendments made to Rules for Courts-Martial 707 and 1010 shall apply only to cases in which arraignment occurs on or after July 6, 1991.

e. The amendment made to Rule for Courts-Martial 908(b)(9) shall apply only to cases in which pretrial confinement is imposed on or after July 6, 1991.

f. The amendment made to Rule for Courts-Martial 1113(c)(1) shall apply only in cases in which the sentence is adjudged on or after July 6, 1991.

g. Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to July 6, 1991, which was not punishable when done or omitted.

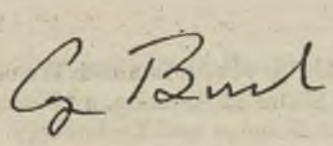
h. The maximum punishment for an offense committed prior to July 6, 1991, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

i. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to July 6, 1991, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this Order to the Congress of the United States in accord with section 836 of title 10 of the United States Code.

THE WHITE HOUSE,

June 27, 1991.



Presidential Documents

Executive Order 12768 of June 28, 1991

Extension of the President's Council of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the President's Council of Advisors on Science and Technology, it is hereby ordered that Section 4(b) of Executive Order No. 12700 is amended by deleting "June 30, 1991" and inserting "June 30, 1993" in lieu thereof.

THE WHITE HOUSE,
June 28, 1991.

[FR Doc. 91-15814
Filed 6-28-91; 11:55 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6310 of June 28, 1991

To Make Changes to the Harmonized Tariff Schedule of the United States

By the President of the United States of America

A Proclamation

1. Section 1211(d)(2) of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act") (19 U.S.C. 3011(d)(2)) requires the United States International Trade Commission ("Commission") to recommend to the President and to the Congress those changes to the Harmonized Tariff Schedule of the United States (HTS) that the Commission would have recommended if certain final judicial decisions published during the 2-year period beginning on February 1, 1988, would have affected tariff treatment if the final decisions had been made before the conversion into the format of the International Convention on the Harmonized Commodity Description and Coding System, June 14, 1983, and the Protocol thereto, June 24, 1986. Section 1211(d)(3) of the 1988 Act (19 U.S.C. 3011(d)(3)) directs the President to review the recommended changes and to proclaim those changes, if any, which he decides are necessary or appropriate to conform the HTS to the pertinent final judicial decisions. This section further provides that any changes proclaimed by the President shall be effective both for entries made on or after the date of the proclamation and for entries made between January 1, 1989, and the date of the proclamation, upon request by the importer for liquidation or reliquidation thereof within 180 days after the effective date of the proclamation.

2. Pursuant to section 1211(d) of the 1988 Act, on September 1, 1990, the Commission reported its recommendations for changes to the HTS to the President in its report on Investigation No. 332–273 (USITC Publication No. 2309, August 1990). After reviewing all of the changes recommended by the Commission, I have decided that all such changes are necessary or appropriate in order to conform the HTS to the decisions identified in the Commission's report.

3. Section 604 of the Trade Act of 1974, as amended ("1974 Act") (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States, including but not limited to section 604 of the 1974 Act and section 1211(d) of the 1988 Act, do proclaim that:

(1) In order to conform the HTS to certain final judicial decisions, the HTS is modified as set forth in Annex I to this proclamation.

(2) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex II to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in Annex II shall be deleted and the rate of duty provided in Annex II inserted in lieu thereof on the dates specified.

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4)(a) The modifications made by paragraph (1) of this proclamation shall be effective with respect to:

(i) entries made on or after the date of signature of this proclamation, and

(ii) entries made on or after January 1, 1989, if application for liquidation or reliquidation thereof is made by the importer to the United States Customs Service within 180 days after the date of signature of this proclamation.

(b) The modifications made by paragraph (2) of this proclamation shall be effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates indicated in the respective columns for such goods in Annex II to this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

Billing code 3195-01-M

ANNEX I

Notes

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, and to entries of such articles made on or after January 1, 1989, if application for liquidation or reliquidation thereof is made by the importer within 180 days of the date of this proclamation:

(a) Subheading 8471.99.30 is superseded by:

	[Automatic...:] [Other:] [Other:] "Power supplies:			
8471.99.32	Units suitable for physical incorporation into automatic data processing machines or units thereof.....	Free		35%
8471.99.34	Other.....	3%	Free (A*,CA,E,IL)	35%"

Conforming change: General note 3(c)(ii)(D) to the HTS is modified by striking out "8471.99.30 Mexico" and by inserting in lieu thereof "8471.99.34 Mexico".

(b) Subheading 9027.20.40 is superseded by:

	[Instruments...:] [Chromatographs...:] "Electrical:			
9027.20.42	Electrophoresis instruments not incorporating an optical or other measuring device.....	3.9%	Free (A,E,IL) [See Annex II] (CA)	40%
9027.20.44	Other.....	4.9%	Free (A,E,IL) [See Annex II] (CA)	40%"

(c) Subheading 9027.90.40 is superseded by:

	[Instruments...:] [Microtomes;...:] [Parts...:] "Of electrical instruments and apparatus:			
9027.90.42	Of electrophoresis instruments not incorporating an optical or other measuring device.....	3.9%	Free (A,E,IL) [See Annex II] (CA)	40%
9027.90.44	Other.....	4.9%	Free (A,E,IL) [See Annex II] (CA)	40%"

ANNEX II

Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation:

For each of the following subheadings created by Annex I(b) and (c) of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1 Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
9027.20.42	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.20.44	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.90.42	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9027.90.44	4.4%	3.9%	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free

[FR Doc. 91-15819
Filed 6-28-91; 12:08 pm]
Billing code 3190-01-C

Reader Aids

Federal Register
Vol. 56, No. 126
Monday, July 1, 1991

INFORMATION AND ASSISTANCE

Federal Register

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Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
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Presidential Documents

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General information	523-5230

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Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

29889-30306.....1

CFR PARTS AFFECTED DURING JULY

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.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 26, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	14.00	[1] Jan. 1, 1991
4	15.00	Jan. 1, 1991
5 Parts:		
1-699	17.00	Jan. 1, 1991
700-1199	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	18.00	Jan. 1, 1991
7 Parts:		
0-26	15.00	Jan. 1, 1991
27-45	12.00	Jan. 1, 1991
46-51	17.00	Jan. 1, 1991
52	24.00	Jan. 1, 1991
53-209	18.00	Jan. 1, 1991
210-299	24.00	Jan. 1, 1991
300-399	12.00	Jan. 1, 1991
400-699	20.00	Jan. 1, 1991
700-899	19.00	Jan. 1, 1991
900-999	28.00	Jan. 1, 1991
1000-1059	17.00	Jan. 1, 1991
1060-1119	12.00	Jan. 1, 1991
1120-1199	10.00	Jan. 1, 1991
1200-1499	18.00	Jan. 1, 1991
1500-1899	12.00	Jan. 1, 1991
1900-1939	11.00	Jan. 1, 1991
1940-1949	22.00	Jan. 1, 1991
1950-1999	25.00	Jan. 1, 1991
2000-End	10.00	Jan. 1, 1991
8	14.00	Jan. 1, 1991
9 Parts:		
1-199	21.00	Jan. 1, 1991
200-End	18.00	Jan. 1, 1991
10 Parts:		
0-50	21.00	Jan. 1, 1991
51-199	17.00	Jan. 1, 1991
200-399	13.00	[2] Jan. 1, 1987
400-499	20.00	Jan. 1, 1991
500-End	27.00	Jan. 1, 1991
11	12.00	Jan. 1, 1991
12 Parts:		
1-199	13.00	Jan. 1, 1991
200-219	12.00	Jan. 1, 1991
220-299	21.00	Jan. 1, 1991
300-499	17.00	Jan. 1, 1991
500-599	17.00	Jan. 1, 1991
600-End	19.00	Jan. 1, 1991
13	24.00	Jan. 1, 1991
14 Parts:		
1-59	25.00	Jan. 1, 1991
60-139	21.00	Jan. 1, 1991
140-199	10.00	Jan. 1, 1991
200-1199	20.00	Jan. 1, 1991
1200-End	13.00	Jan. 1, 1991
15 Parts:		
0-299	12.00	Jan. 1, 1991
300-799	22.00	Jan. 1, 1991
800-End	15.00	Jan. 1, 1991
16 Parts:		
0-149	5.50	Jan. 1, 1991
150-999	14.00	Jan. 1, 1991
1000-End	19.00	Jan. 1, 1991
17 Parts:		
1-199	15.00	Apr. 1, 1991
*200-239	16.00	Apr. 1, 1991
240-End	23.00	Apr. 1, 1990
18 Parts:		
1-149	15.00	Apr. 1, 1991
150-279	16.00	Apr. 1, 1990
280-399	13.00	Apr. 1, 1991
400-End	9.50	Apr. 1, 1990
19 Parts:		
1-199	28.00	Apr. 1, 1990
200-End	9.50	Apr. 1, 1990
20 Parts:		
1-399	16.00	Apr. 1, 1991
400-499	25.00	Apr. 1, 1991
500-End	28.00	Apr. 1, 1990
21 Parts:		
*1-99	12.00	Apr. 1, 1991
100-169	15.00	Apr. 1, 1990
170-199	17.00	Apr. 1, 1990
200-299	5.50	Apr. 1, 1990
300-499	29.00	Apr. 1, 1990
500-599	21.00	Apr. 1, 1990
600-799	8.00	Apr. 1, 1990
800-1299	18.00	Apr. 1, 1990
1300-End	7.50	Apr. 1, 1991
22 Parts:		
1-299	25.00	Apr. 1, 1991
300-End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0-199	20.00	Apr. 1, 1990
200-499	27.00	Apr. 1, 1991
500-699	13.00	Apr. 1, 1991
700-1699	24.00	Apr. 1, 1990
1700-End	13.00	[4] Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0-1-1.60	15.00	Apr. 1, 1990
§§ 1.61-1.169	28.00	Apr. 1, 1990
§§ 1.170-1.300	18.00	Apr. 1, 1990
§§ 1.301-1.400	17.00	Apr. 1, 1990
§§ 1.401-1.500	29.00	Apr. 1, 1990
§§ 1.501-1.640	16.00	Apr. 1, 1991
§§ 1.641-1.850	19.00	[4] Apr. 1, 1990
§§ 1.851-1.907	20.00	Apr. 1, 1990
§§ 1.908-1.1000	22.00	Apr. 1, 1990
§§ 1.1001-1.1400	18.00	[4] Apr. 1,1990
§§ 1.1401-End	24.00	Apr. 1, 1990
2-29	21.00	Apr. 1, 1990
30-39	15.00	Apr. 1, 1990
40-49	13.00	[3] Apr. 1, 1989
50-299	16.00	[3] Apr. 1, 1989
300-499	17.00	Apr. 1, 1991
500-599	6.00	[4] Apr. 1, 1990
600-End	6.50	Apr. 1, 1990
27 Parts:		
1-199	24.00	Apr. 1, 1990
200-End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
500–899	26.00	July 1, 1990
900–1899	12.00	July 1, 1990
1900–1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
1911–1925	9.00	[5] July 1, 1989
1926	12.00	July 1, 1990
1927–End	25.00	July 1, 1990
30 Parts:		
0–199	22.00	July 1, 1990
200–699	14.00	July 1, 1990
700–End	21.00	July 1, 1990
31 Parts:		
0–199	15.00	July 1, 1990
200–End	19.00	July 1, 1990
32 Parts:		
1–39, Vol. I	15.00	[6] July 1, 1984
1–39, Vol. II	19.00	[6] July 1, 1984
1–39, Vol. III	18.00	[6] July 1, 1984
1–189	24.00	July 1, 1990
190–399	28.00	July 1, 1990
400–629	24.00	July 1, 1990
630–699	13.00	[5] July 1, 1989
700–799	17.00	July 1, 1990
800–End	19.00	July 1, 1990
33 Parts:		
1–124	16.00	July 1, 1990
125–199	18.00	July 1, 1990
200–End	20.00	July 1, 1990
34 Parts:		
1–299	23.00	July 1, 1990
300–399	14.00	July 1, 1990
400–End	27.00	July 1, 1990
35	10.00	July 1, 1990
36 Parts:		
1–199	12.00	July 1, 1990
200–End	25.00	July 1, 1990
37	15.00	July 1, 1990
38 Parts:		
0–17	24.00	July 1, 1990
18–End	21.00	July 1, 1990
39	14.00	July 1, 1990
40 Parts:		
1–51	27.00	July 1, 1990
52	28.00	July 1, 1990
53–60	31.00	July 1, 1990
61–80	13.00	July 1, 1990
81–85	11.00	July 1, 1990
86–99	26.00	July 1, 1990
100–149	27.00	July 1, 1990
150–189	23.00	July 1, 1990
190–259	13.00	July 1, 1990
260–299	22.00	July 1, 1990
300–399	11.00	July 1, 1990
400–424	23.00	July 1, 1990
425–699	23.00	[5] July 1, 1989
700–789	17.00	July 1, 1990
790–End	21.00	July 1, 1990
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[7] July 1, 1984
3–6	14.00	[7] July 1, 1984
7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
10–17	9.50	[7] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[7] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[7] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[7] July 1, 1984
19–100	13.00	[7] July 1, 1984
1–100	8.50	July 1, 1990
101	24.00	July 1, 1990
102–200	11.00	July 1, 1990
201–End	13.00	July 1, 1990
42 Parts:		
1–60	16.00	Oct. 1, 1990
61–399	5.50	Oct. 1, 1990
400–429	21.00	Oct. 1, 1990
430–End	25.00	Oct. 1, 1990
43 Parts:		
1–999	19.00	Oct. 1, 1990
1000–3999	26.00	Oct. 1, 1990
4000–End	12.00	Oct. 1, 1990
44	23.00	Oct. 1, 1990
45 Parts:		
1–199	17.00	Oct. 1, 1990
200–499	12.00	Oct. 1, 1990
500–1199	26.00	Oct. 1, 1990
1200–End	18.00	Oct. 1, 1990
46 Parts:		
1–40	14.00	Oct. 1, 1990
41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
90–139	12.00	Oct. 1, 1990
140–155	13.00	Oct. 1, 1990
156–165	14.00	Oct. 1, 1990
166–199	14.00	Oct. 1, 1990
200–499	20.00	Oct. 1, 1990
500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
20–39	18.00	Oct. 1, 1990
40–69	9.50	Oct. 1, 1990
70–79	18.00	Oct. 1, 1990
80–End	20.00	Oct. 1, 1990
48 Chapters:		
1 (Parts 1–51)	30.00	Oct. 1, 1990
1 (Parts 52–99)	19.00	Oct. 1, 1990
2 (Parts 201–251)	19.00	Oct. 1, 1990
2 (Parts 252–299)	15.00	Oct. 1, 1990
3–6	19.00	Oct. 1, 1990
7–14	26.00	Oct. 1, 1990
15–End	29.00	Oct. 1, 1990
49 Parts:		
1–99	14.00	Oct. 1, 1990
100–177	27.00	Oct. 1, 1990
178–199	22.00	Oct. 1, 1990
200–399	21.00	Oct. 1, 1990
400–999	26.00	Oct. 1, 1990
1000–1199	17.00	Oct. 1, 1990
1200–End	19.00	Oct. 1, 1990
50 Parts:		
1–199	20.00	Oct. 1, 1990
200–599	16.00	Oct. 1, 1990
600–End	15.00	Oct. 1, 1990
CFR Index and Findings Aids	30.00	Jan. 1, 1991
Complete 1991 CFR set	620.00	1991
Microfiche CFR Edition:		
Complete set (one-time mailing)	185.00	1988
Complete set (one-time mailing)	185.00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188.00	991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 31, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1991
January—April 1991 Editions and Projected July, 1991 Editions

This list sets out the CFR issuances for the January–April 1991 editions and projects the publication plans for the **July, 1991** quarter. A projected schedule that will include the **October, 1991** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1990–1991 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1991 editions:

Title	
CFR Index	1–199
	200–End
1–2	
	10 Parts:
3 (Compilation)	0–50
	51–199
4	200–399 (Cover only)
	400–499
5 Parts:	500–End
1–699	
700–1199	**11**
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–219
7 Parts:	220–299
0–26	300–499
27–45	500–599
46–51	600–End
52	
53–209	**13**
210–299	
300–399	**14 Parts:**
400–699	1–59
700–899	60–139
900–999	140–199
1000–1059	200–1199
1060–1119	1200–End
1120–1199	
1200–1499	**15 Parts:**
1500–1899	0–299
1900–1939	300–799
1940–1949	800–End
1950–1999	
2000–End	**16 Parts:**
	0–149
8	150–999
	1000–End
9 Parts:	
1–199	**17 Parts:**
200–End	1–199
	200–239
10 Parts:	240–End*
0–50	
51–199	**18 Parts:**
200–399 (Cover only)	1–149
400–499	150–279*
500–End	280–399
	400–End
11	
	19 Parts:
12 Parts:	1–199*
1–199	200–End
200–219	
220–299	**20 Parts:**
300–499	1–399
500–599	400–499
600–End	500–End*
13	**21 Parts:**
	1–99
14 Parts:	100–169
1–59	170–199
60–139	200–299
140–199	300–499
200–1199	500–599
1200–End	600–799
	800–1299*
15 Parts:	1300–End
0–299	
300–799	**22 Parts:**
800–End	1–299
	300–End
16 Parts:	
0–149	**23**
150–999	
1000–End	**24 Parts:**
	0–199*
17 Parts:	200–499
1–199	500–699
200–239	700–1699*
240–End*	1700–End (Cover only)
18 Parts:	**25**
1–149	
150–279*	**26 Parts:**
280–399	1 (§§ 1.0–1–1.60)
400–End	1 (§§ 1.61–1.169)
	1 (§§ 1.170–1.300)
19 Parts:	1 (§§ 1.301–1.400)
1–199*	1 (§§ 1.401–1.500)
200–End	1 (§§ 1.501–1.640)
	1 (§§ 1.641–1.850) (Cover only)
20 Parts:	1 (§§ 1.851–1.907)*
1–399	1 (§§ 1.908–1.1000)*
400–499	1 (§§ 1.1001–1.1400) (Cover only)
500–End*	1 (§ 1.1401–End)*
	2–29*
21 Parts:	30–39
1–99	40–49
100–169	50–299
170–199	300–499
200–299	500–599 (Cover only)
300–499	600–End
500–599	
600–799	**27 Parts:**
800–1299*	1–199*
1300–End	200–End

Projected July 1, 1990 editions:

Title	
28	400–End
29 Parts:	**35**
0–99	
100–499	**36 Parts:**
500–899	1–199
900–1899	200–End
1900–1910 (§§ 1901.1000–1910.441)	**37**
1910 (§§ 1910.1000–End)	
1911–1925 (Cover only)	**38 Parts:**
1926	0–17
1927–End	18–End
30 Parts:	**39**
0–199	
200–699	**40 Parts:**
700–End	1–51
	52
31 Parts:	53–60
0–199	61–80
200–End	81–85
	86–99
32 Parts:	100–149
1–189	150–189
190–399	190–259
400–629	260–299
630–699 (Cover only)	300–399
700–799	400–424
800–End	425–699 (Cover only)
	700–789
33 Parts:	790–End
1–124	
125–199	**41 Parts:**
200–End	Chs. 1–100 (Cover only)
	Ch. 101
34 Parts:	Chs. 102–200
1–299	Ch. 201–End
300–399	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
July 29	August 13	August 28	September 12	September 27	October 28
July 30	August 14	August 29	September 13	September 30	October 28
July 31	August 15	August 30	September 16	September 30	October 29