three months proposed to be dropped since October of 1991. Furthermore, since 1992 the CMSA has not been prone to high ambient concentrations of CO during those three months. Under the approach used in EPA's guidance, ''prone to high ambient concentrations of carbon monoxide'' is a criterion more stringent than the NAAQS, in that the CO levels which characterize an area as being prone to high CO concentrations during a specific period may be lower than the NAAQS and therefore not necessarily exceed it.

EPA believes that implementation of new programs under the Clean Air Act in each state in the CMSA will adequately ensure continued observance of reduced levels of CO during the months of October, March and April. Reformulated gasoline (RFG) is a year round clean gasoline program, which provides gasoline oxygenated to 2.0 percent. This program was initiated on January 1, 1995, in the CMSA (see 59 FR 7716, February 16, 1994). EPA believes that implementation of an enhanced inspection and maintenance (I/M) program [40 CFR Part 51, Subpart S] and the turnover of the New York-Northern New Jersey-Long Island CMSA fleet to newer, cleaner vehicles, combined with the use of RFG will ensure continued lower CO emissions from motor vehicles for the CMSA during October, March and April, even in the absence of the higher minimum oxygen content.

While the established guidance bases the determination of control period only on air quality monitoring data (which exists for the entire New York-Northern New Jersey-Long Island CMSA for 1992 to 1995), EPA believes that it is prudent also to provide a technical analysis further supporting the reduction of oxygen content during the shoulder months in the area. EPA performed a series of computer model runs to support the contention that in future years, starting with Autumn 1996, without sales of gasoline oxygenated to 2.7 percent, but with implementation of federal RFG and enhanced I/M (or an inspection program deemed equivalent thereto), combined with vehicle turnover, CO emissions will continue to be lower during October, March and April in the area.

Since, after the implementation of the oxygenated fuels program, the first observance of low CO levels during those months was in 1993, average vehicle emissions from that year were used as an upper limit in determining the adequacy of CO control without higher oxygen content in October, March and April. Modelled levels of CO below the levels observed in the shoulder months in 1993 will provide further assurance that the shorter control period will not result in high CO levels during those three months.

Solicitation of Comment

EPA invites comment on the following information, which EPA believes provides additional support for its proposed determination regarding the appropriate control period for this CMSA. The solicitation of comment is therefore limited to comments related to this additional information. EPA is not soliciting comment for any other purpose, and will not consider as timely any comments addressing other points.

EPA performed a comparison of average vehicle emissions using the most current version of EPA's emission factor model for mobile sources, MOBILE5a. All modeling assumed implementation of RFG (with 2.0 percent oxygen content) and implementation of an enhanced I/M program (or an equivalent inspection program) in New Jersey for the 1996–1997 season and future CO seasons. MOBILE5a variables such as vehicle speeds and a vehicle miles traveled growth rate were specific to New Jersey (supplied by the New Jersey Department of Environmental Protection and the New Jersey Department of Transportation). For further details regarding the MOBILE5a runs and the subsequent comparisons, the reader is referred to the technical support document for this notice and the related notice issuing a limited approval for New Jersey's program.

Modeling further assures that after removing 2.7 percent oxygenated gasoline, but accounting for the effects of RFG, enhanced I/M and vehicle turnover, vehicle emissions of CO, through calendar year 2020 (based on an average day in the CO season in each of those years), will still be at least 18 percent less than vehicle emissions of CO in 1993 with 2.7 percent oxygenated gasoline during October, March and April. This supports EPA's belief that, even with elimination of oxygenated gasoline program requirements in the shoulder months in the area, the area will not be prone to ''high'' ambient concentrations during those months. The modeling results do not affect EPA's determination that a four month control period complying with the statutory minimum length is still required. Should future ambient air quality data show that high CO levels do in fact occur in the shoulder months, contrary to EPA's predictions, EPA would reevaluate its determination of the period prone to high ambient concentrations of CO.

Dated: January 19, 1996.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 96–2582 Filed 2–9–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 440

[WH–FRL–5419–1]

RIN 2040–AC74

Amendment to Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the applicability of certain effluent limitations guidelines and new source performance standards governing mines with froth-flotation mills to the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska. Specifically, EPA is proposing to exempt dewatered tailings produced by the proposed A–J mine and mill from effluent guidelines based on best practicable control technology (BPT) and best available control technology economically achievable (BAT), and from new source performance standards (NSPS) that appear at 40 CFR part 440, subpart J. EPA also is proposing that a definition of ''dewatered tailings'' be added to 40 CFR part 440, subpart L. EPA is issuing today's proposal because the use of a tailings impoundment was part of the technology basis for the BPT, BAT, and NSPS requirements of subpart J; however, it appears that extreme topographic and climatic conditions at the A–J project site render it impractical to treat and dispose of tailings in a tailings impoundment so as to meet the requirements of subpart J. EPA would not take action to finalize this proposal if a feasible alternative for tailings treatment is identified that would obviate the need for the exemption. EPA expects to make a final determination with respect to this proposal by the end of 1996. Since this proposed rule is deregulatory in nature, no costs are estimated. The benefit of this proposed rule is the potential for increased flexibility in permitting the disposal of tailing wastes from the gold mine and mill operations, resulting in the mitigation of environmental impacts. Costs and benefits resulting from this action will be determined as part of the environmental assessment of feasible alternatives. During the preparation of this proposed rule, the Agency held

consultations with State and local governments, industry, and public interest group representatives.

DATES: Comments on this proposal must be submitted on or before April 12, 1996, except for comments concerning technological alternatives for the A–J project site. The comment period on that issue will be open until August 12, 1996. A series of public meetings concerning the exclusion of dewatered tailings from coverage of 40 CFR part 440, subpart J is being planned for the Spring of 1996 during the extended comment period. The times and locations of these meetings will be published in the Federal Register and local newspapers when they are finalized.

ADDRESSES: Send comments to Ore Mining Comment Clerk, Water Docket Mail Code 4101, Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460. Commenters are requested to submit an original and three copies of their comments, enclosures or references. The supporting information and all comments on this proposal will be available for inspection and copying at the Water Docket, located in Room L102 at the above address. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald G. Kirby at (202) 260–7168.

SUPPLEMENTARY INFORMATION:

A. Legal and Regulatory Background

EPA issued effluent limitations guidelines for the ore mining and dressing point source category based on Best Practicable Technology (BPT) on July 11, 1978 (43 FR 29771). Effluent limitations guidelines based on Best Available Technology (BAT) and New Source Performance Standards (NSPS) were issued on December 3, 1982 (47 FR 54598). These are codified at 40 CFR part 440. Detailed engineering, technical and cost information supporting the ore mining and dressing guidelines and standards are summarized in reports entitled Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category, Volume I and II July 1978, EPA # 440/1–78/061d and e (''1978 Development Document'') and Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category, EPA # 440/1–82/061, November 1982 (''1982 Development Document''). The economic analysis for NSPS in part 440 is summarized in Economic Analysis of New Source Performance Standards for the Ore Mining and Dressing Industry, November 1982. These documents and the rest of the supporting public record for the part 440 guidelines and standards are available for review at the EPA Water Docket and are part of the record for this proposal.

BPT limitations generally represent the average of the best existing waste treatment performance within an industry subcategory. BAT limitations generally represent the best existing performance in the industrial subcategory or category. In establishing BAT, the Agency considers such factors as the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction and nonwater quality environmental impacts. NSPS are based on the best available demonstrated technology. In general, the best available demonstrated technology consists, in part or completely, of the same technology as that determined for BAT for existing sources within an industry. However, in some cases it is determined that new plants have the opportunity to install more efficient production processes and wastewater treatment technologies than existing sources. In such cases, NSPS may be established at a level more stringent than BAT. While EPA bases effluent limitations guidelines and new source performance standards on identified technologies, dischargers are not required to use any particular technology. They may meet the effluent limitations and standards using any technology they determine is appropriate.

Effluent limitations guidelines and new source performance standards applicable to Copper, Lead, Zinc, Gold, Silver, and Molybdenum ore mines, including mines with froth-flotation mills, appear at 40 CFR part 440, subpart J (''Subpart J'').

B. Technical Information

Gold mining has historically occurred in the Alaskan region near Juneau. Economic conditions have improved in recent years, stimulating continued extraction of this valuable resource. Due to improvements in the technology to extract lower concentrations of precious metals, and the continuing stable prices received for these metals, a number of projects have been identified, at or near previously mined areas in southeast Alaska, as economically feasible. As is explained in more detail below, the use of an impoundment was part of the technology basis for the BPT, BAT and NSPS requirements of subpart J. Since the issuance of the ore mining and dressing guidelines, a number of projects covered by subpart J have progressed through the permit process. A few of these projects have identified the use of impoundments as a potential problem, although without merit in EPA's view. However, the detailed site specific design information from the Alaska-Juneau (A–J) project recently has brought into question the appropriateness of the technology basis for the requirements of subpart J, as applied to the A–J site. The function of the impoundment as part of the technology basis and its application to the A–J project site are discussed below, along with the effect of today's proposal.

1. Application of Subpart J to A–J Project

The existing BPT, BAT, and NSPS requirements in Subpart J that are applicable to mines with froth-flotation mills are based on treatment technology consisting of impoundment, treatment of the impoundment (pond) water to precipitate metals and enhanced settling of particulate matter by pH adjustment, chemical flocculent treatment, if necessary, clarification and filtration of overflow pond water for recycle back to the mill. For BPT and BAT, the Agency determined that although many existing froth-flotation mills were practicing wastewater treatment and recycle, the cost to retrofit the remaining mills' treatment systems would be prohibitive. Thus, the technology basis for both BPT and BAT did not include total recycle, and BAT limitations were set equivalent to BPT for existing sources. For NSPS, the Agency determined that new sources could design a wastewater treatment and recycle system in conjunction with a tailings impoundment that would generally achieve no discharge of process wastewater. (NSPS includes exceptions that allow discharges under certain specified circumstances, as noted below.)

Tailings ponds have been used historically in the mining industry. Tailings are the waste rock remaining after the processing of the mineral-bearing (lode) ore. The lode ore is processed by crushing and grinding, and then separation and concentration. Remaining pulverized lode ore that is too poor in gold to be further processed and waste material resulting from the washing, concentration, or treatment of the ground ore are known as ''tailings.'' These are sent to the tailings pond, which serves as the disposal site for the solids (pulverized waste rock and other

precipitates) that settle out of the tailings wastestream when it is added to the pond. The impoundment is designed primarily for suspended solids removal and retention, so it must be large enough to provide sufficient retention time and quiescent conditions conducive to settling, including adequate volume to hold the settled solids. The tailings impoundment assumed by EPA in establishing the requirements of Subpart J is designed to permanently hold the mill tailings expected for the life of the mine while also containing precipitation that falls directly on the impoundment and the runoff resulting from a 10 year, 24 hour storm event. Additional impoundment volume may be necessary to promote the settling of solids to achieve allowable discharge limitations.

The location of a tailings impoundment is determined by evaluating the best site for gravity flow of tailings to an area for permanent disposal, for minimal inflow from runoff or stream flow, and for a stable dam. The mine project site (including the mill) is located in close proximity to the ore body to control costs in order to make the project economically viable. Most tailings impoundments are located within a few miles of the ore body. Information in the 1978 and 1982 records indicates that approximately six miles was the greatest distance between the tailings impoundment and the mill at existing mines that were studied.

Generally, even when siting a tailings pond in a narrow valley with severe slopes, a location can be found to allow diversion of stream flow around the tailings pond to prevent or minimize pollution potential. For example, the tailings impoundment can be placed adjacent to one wall of the valley. It may be necessary to reroute the stream by means of contouring or construction of open channels or conduits. Runoff can be prevented from entering the impoundment by constructing diversion ditches, flumes, and dikes upslope and along the sides of the impoundment.

Tailings can be characterized generally as a process wastewater with approximately 20–50 percent solids by weight. In arid or semi-arid areas, evaporation and seepage from the tailings pond may equal or exceed the input of the water fraction of the tailings wastestream (*i.e.*, the remaining 50–80 percent by weight liquid fraction). In all areas, even arid areas, the amount of runoff entering the tailings pond is minimized by diversion using a number of common management practices. However, in areas of net annual precipitation (*i.e.*, where the annual rainfall and snowfall amount exceeds the annual amount of evaporation), Subpart J allows excess pond water to be discharged based on a calculated amount of runoff for BPT, BAT, and NSPS, subject to specified effluent limitations. 40 CFR 440.102(c)(2); 440.103(c)(2); 40 CFR 104(b)(2)(i). The amount of runoff is determined by the difference in annual precipitation and evaporation rates times the amount of surface area of the pond that receives direct precipitation and the amount of ground surface area surrounding the pond that drains into it. For NSPS, EPA also included, in response to comments, an exemption from no discharge for an equivalent volume of fresh (makeup) water that mills could demonstrate is necessary due to a buildup of contaminants in the recycled pond water that significantly interferes with the ore recovery process. Such a discharge, which also is subject to specified limitations, is allowed only if the interference can not be eliminated through appropriate treatment of the recycle water. 40 CFR 440.104(b)(2)(ii). In addition, the volume of any excess runoff from a single storm or combined storm event exceeding the 10 year, 24 hour event design criteria of the pond also may be discharged. 40 CFR 440.131(b). Treatment of the excess pond water, in addition to its settling in the tailings impoundment, may be required using chemical flocculation either directly in the tailings pond or in subsequent treatment units to enhance solids settling and to precipitate and settle metal hydroxides in order to meet the current discharge limitations.

The intended function of the tailings impoundment (pond) that is part of the technology basis for BPT, BAT, and NSPS in Subpart J was critical to the establishment of all three sets of limitations. The ability to divert surface runoff and existing stream flow from entering the pond is most critical in high precipitation areas for the proper function of the tailings pond with respect to meeting the BPT, BAT, and NSPS requirements of Subpart J. Studies conducted by EPA in developing BPT, BAT, and NSPS evaluated a number of geographic locations where extreme topography and high rainfall were evident. Where topography and climatic extremes render any significant amount of diversion impractical, most or possibly all of the water within the watershed in which the impoundment is located will enter the impoundment and become contaminated by mine and mill wastewater, making subsequent treatment of the wastewater to meet recycle or discharge quality requirements more difficult.

The technology basis for the BPT and BAT discharge limitations and the NSPS no discharge requirement in subpart J included an ability for mills to divert significant amounts of natural stream flow and surface runoff around the tailings impoundment. In net precipitation areas, as well as net evaporation areas, EPA assumed or identified some degree of ability to divert runoff and/or stream flow in evaluating the design and construction of the tailings impoundments and their ability to meet the requirements of subpart J. In both the 1978 and the 1982 Development Documents supporting BPT, BAT, and NSPS, EPA discussed diversion or minimization of surface runoff at various sites, and considered the types of practices available for achieving it. EPA also considered the possibility that extreme topography could be an obstacle to achieving no discharge, but judged that the exemptions and provisions discussed above would provide the relief that would be necessary for a mill to operate under the no discharge requirement. See the 1982 Development Document, page 535.

Many of the mills that were evaluated during the development of NSPS for subpart J practiced recycle and achieved no discharge. However, most of these mills were located in net evaporation areas or water short areas, where all of the excess pond water that could not be recycled would evaporate or seep out of the pond. EPA did include mills located in net precipitation areas in its evaluation of the no discharge requirement. In these areas, rainfall could occur in such quantity and at a regular enough frequency that pond water in excess of that required for recycle cannot be evaporated or seeped at a high enough rate to meet a no discharge requirement. Thus, the discharge allowances previously discussed were incorporated into the NSPS.

2. Today's Proposal

In light of the importance of the ability to divert natural stream flow and runoff, specific information from the A–J gold mine project has called into question the appropriateness of applying the requirements of Subpart J to this project. The A–J project has been evaluated in an Environmental Impact Statement prepared by the Bureau of Land Management (BLM). In BLM's preferred alternative, the design of the tailings impoundment includes a dam extending the width of Sheep Creek Valley to a height of 345 feet. The impoundment would encompass 420 acres of the 540 acre valley. The large

volume of the impoundment was made necessary in part because of the extremely large volume of tailings generated (over 100 million tons) during the life of the project and by the inability to divert runoff and stream flow using the common practices discussed above. In the case of the A–J project, the technical review of the submitted project design determined that for those design options presented, all of the existing stream flow and runoff would enter the impoundment and preclude adequate treatment of the wastewater prior to discharge.

If the tailings impoundment were used at the Sheep Creek Valley site in a manner anticipated by the current Subpart J requirements, but without the benefit of diverting the natural stream-flow, significant amounts of runoff from rainfall events would enter the impoundment and by coming into direct contact with the actual mill process wastewater, be considered as ''process wastewater'' as defined at 40 CFR 401.11(q). As described previously, all or almost all of this runoff, entering the impoundment, would be allowed to be discharged under NSPS as part of the storm allowance provision, along with any contaminant build up and/or mine drainage wastewaters, provided that discharge meets the specified limitations. Because of the inability to divert water around the Sheep Creek Valley impoundment location, an exceptionally large volume of process wastewater would be generated, and would make treatment options contemplated by the current technology basis unable to meet the limits imposed by the allowances. These same considerations apply to BPT and BAT except for the fresh makeup water allowance described earlier.

EPA's Region 10 issued a report regarding the A–J project plan in December 1994 entitled, ''Alaska Juneau Gold Mine Project, Technical Assistance Report for the U.S. Army Corps of Engineers Alaska District'' (known as the ''TAR''). The TAR concluded that implementation of the plan to construct the tailings impoundment across the valley and discharge this amount of wastewater likely would not ensure compliance with NSPS and would cause widespread exceedances of state water quality standards. In addition, the TAR concluded that the tailings impoundment would remain a substantial risk even after closure of the mill because it would not be isolated from the existing stream flow, including all or almost all of the valley's precipitation runoff. This would require continued maintenance of the impoundment dam as an active retention structure for a large volume of water in an area of active seismic activity and avalanche hazards. As part of a supplemental environmental impact statement (SEIS) under the National Environmental Policy Act (NEPA), additional project design alternatives for the A–J project will be evaluated, including whether an alternative location for an impoundment is possible.

EPA has concluded from the technical information identified and discussed above that the requirements in Subpart J might not be appropriate for tailings from a new ore mill located in Sheep Creek Valley, as described in the A–J project EIS. Due to the substantial annual net precipitation along with extreme topography, the combination of which leads to an inability to divert natural stream flow and any significant volume of surface runoff around the tailings impoundment, treatment of the discharge to allowable concentration levels cannot be accomplished. In addition, the 1978 and 1982 final rules did not consider the long-term (post-closure) safety considerations, such as the long-term structural integrity of the impoundment dam, that result from the existence of a tailings pond that was not isolated from stream flow and runoff.

Thus, EPA is proposing to exempt dewatered tailings from the A–J project from the existing BPT, BAT, and NSPS requirements in 40 CFR part 440, subpart J (§ 440.102–104). EPA also is proposing to add a definition of ''dewatered tailings'' to 40 CFR part 440, Subpart L, specifying that ''dewatered tailings'' means that portion of a mill tailings slurry wastestream from which approximately 75 percent or more of the water fraction has been removed for recycling through the mill. This definition continues to rely on the recycle portion of the technology basis for the current rule following the separation of much of the solids which are contained as part of the tailings, for possible discharge using an alternative control technology. Mine drainage, process wastewater separated from the dewatered tailings, and other process wastewater discharges from the A–J project would continue to be covered by subpart J. NPDES permit requirements for discharges of dewatered tailings from the A–J project would be determined by EPA using best professional judgment in accordance with 40 CFR 125.3, utilizing the results of ongoing environmental review of the project under NEPA.

EPA's proposal to exempt dewatered tailings from the A–J project from the requirements of NSPS has some precedent. During development of the 1982 ore mining and dressing guidelines, the Agency received comments from developers of a molybdenum mine and mill in southeastern Alaska (Quartz Hill). The developers argued that the mill differed substantially from the existing molybdenum mills upon which the Agency based the proposed NSPS and that the alternative of submarine tailings disposal should not be precluded from consideration. Specifically, they argued that precipitation was greater at the Quartz Hill site than at other facilities and that the terrain was unusually steep, necessitating the construction of a dam much larger than tailings impoundments at existing facilities. They argued that since the mine and mill were located in the environmentally sensitive Misty Fjords National Monument, construction of a massive tailings impoundment may result in greater long term environmental degradation than at existing facilities. They also pointed out that the mine and mill were being developed in accordance with the dictates of the Alaska National Interest Lands Conservation Act (ANILCA), which requires an intensive study of the overall environmental impact of the mine and mill before construction begins. Finally, they noted that the mine and mill were in an earthquake area, and that construction of a large tailings dam raises concerns for safety of the population below the dam. The Agency disagreed with the commenter's assertions that the proposed molybdenum mine and mill differed significantly in topography and climate from existing mines and mills. However, given the possibility that compliance with the no discharge NSPS would result in substantial non-water quality environmental impacts, and given the fact that these impacts were being subjected to an intense environmental scrutiny, the Agency exempted the project from requirements of NSPS.

Today's proposal to exempt the A–J project from certain requirements of Subpart J opens the way for the detailed evaluation of alternatives for treatment of the tailings from the project that are not allowable under the current regulations. Some of these alternatives do not involve the use of Sheep Creek Valley as an impoundment site and might lessen the environmental impacts of the project. This portion of the preamble discusses technologies that involve the use of a smaller impoundment or no impoundment at all.

As part of the review of the original A–J project design submittal, the Bureau of Land Management (BLM) conducted

an environmental impact analysis reported in the document titled, ''A–J Gold Mine Project Final Environmental Impact Statement'' (BLM, 1992). The BLM analysis included evaluations of tailings disposal options other than the construction of the dam and impoundment in Sheep Creek Valley. These alternatives included refilling of the mine with dewatered tailings, disposal of dry tailings on land, and disposal of tailings at alternative disposal locations (*e.g.*, Powerline/Icy Gulch, Sheep Fork Carlson Creek, and Rhine Creek). Generally, these alternatives were rejected because of expected exceedances of water quality criteria or because of cost which would render the project uneconomical. Some of these alternatives may receive additional consideration as a result of the SEIS effort. For example, EPA concluded in the TAR that the Powerline/Icy Gulch disposal location should be re-evaluated because diversion of up to 80 percent of the surface runoff may be achievable. In addition, the discharge of tailings from the A–J project to marine waters (submarine tailings disposal), which otherwise would be prohibited by subpart J, could appropriately be evaluated as a result of today's proposal. The discharge of tailings to marine waters would require final revision of subpart J under today's proposal. A combination of the above disposal alternatives could also be considered.

Potential difficulties with the use of tailings impoundments in areas of extreme topography and climate were raised both during the development of the existing part 440 guidelines and standards and also during the permitting process for several mine and mill sites. However, except for the Quartz Hill site (which was undergoing a separate environmental review during the development of part 440 and was excluded from coverage by that Part), no other site that EPA has reviewed until now has exhibited such extreme topographic and climatic conditions that an exemption from certain Subpart J requirements, as proposed, might be warranted. Because much of southeastern Alaska consists of highly mountainous terrain characterized by glacially carved valleys with avalanche chutes and talus slopes, EPA solicits comment on whether other mine sites exhibit extreme environmental conditions such as those at the A–J project site, and would be estimated to have project characteristics such as extremely large volumes of tailings that would pose treatment and disposal problems under part 440.

As mentioned above, the A–J project site is the only current new source site reviewed by EPA that exhibits extreme topographic and climatic conditions which might justify an exemption from certain Subpart J requirements, as proposed. If additional sites are identified, a more general exemption provision might be appropriate, provided that adequate criteria can be established to identify project sites that would qualify for the exemption. EPA is considering the following possible alternative to an exemption that covers the A–J project only:

> (e) The provisions of this subpart shall not apply to discharges of dewatered tailings if a permit applicant demonstrates to the satisfaction of the permitting authority that due to high net precipitation and extreme topography (e.g., steep valley walls, avalanche hazards, or talus slopes), it would not be feasible to divert natural stream flow and runoff, rendering impractical the treatment and disposal of tailings in a tailings impoundment.

If a more general exemption provision is incorporated into the final rule based on comments and additional data on the characteristics of extreme sites, quantifiable criteria to identify qualifying sites might be included. EPA solicits comment on the type of criteria that could be included in such a provision. The amount of annual precipitation, slope of mountainous terrain, width of valley floor and location of avalanche chutes and/or seismically active (earthquake) areas are examples of quantifiable criteria that could be useful in establishing a more general exemption provision.

EPA might take final action with respect to today's proposed exemption covering only the A–J project site. Alternatively, based on the additional information, EPA might identify a feasible alternative for tailings treatment by the A–J project that would allow compliance with the existing regulations and obviate the need for any exemption from Subpart J as proposed. The Agency could also promulgate a more general exemption as described above, or take final action with respect to the A–J project site but proceed to collect further data on other project sites identified by commenters or on criteria for a more generally applicable exemption. Variations on these approaches are also possible. EPA will evaluate all comments and information received prior to making a final determination, which the Agency currently expects to do by the end of 1996.

3. Further Evaluation of A–J Project Proposal

Today's proposal does not in itself authorize or endorse any method of tailings treatment or disposal at the A–J site. As discussed previously, additional designs for the A–J project are expected to be evaluated under NEPA. These studies are conducted as part of the NPDES permitting process for new sources. Any permit issued would include discharge requirements based on applicable NSPS or effluent limitations guidelines, on best professional judgment (BPJ) where guidelines are not applicable, and on any applicable water quality standards. 40 CFR 122.49(g), 40 CFR 122.44(a) and 40 CFR 122.44(d).

In preparation for the development of the draft NPDES permit, scoping for the AJ project SEIS is scheduled to begin in February, 1996, with publication of a draft SEIS in late Spring of 1996. The SEIS will evaluate the impacts of the disposal of mine tailings in marine waters (approximately 300 feet deep) in Stephens Passage, several miles south of the city of Juneau. The tailings would be produced by processing finely ground ore via gravity separation and flotation using various reagents (no cyanide) to produce a concentrate that would be shipped elsewhere for refining. The tailings would be dewatered to allow for recycling of the process water in the milling process. The dewatered tailings, which may be remixed with sea water (for buoyancy control), would be piped to a discharge point in Stephens Passage.

In addition to disposal of dewatered tailings in deep marine waters, the SEIS will examine other potential tailings disposal sites. The SEIS will specifically examine whether there are any potential upland tailings impoundment sites where the diversion of surface runoff would be possible. A Final SEIS should be available by late 1996.

4. Conclusion and Request for Comments

EPA solicits comment and additional information on all aspects of today's proposal to amend the applicability of subpart J. In particular, the Agency seeks comment on whether an exemption for the A–J mine project from the requirements of Subpart J as proposed is warranted; and whether additional project sites exist which exhibit extreme topographic and climatic conditions that might warrant the exclusion of dewatered tailings from coverage under subpart J. Information also is requested on the types of criteria that could be used to establish a more

general exemption from the requirements of Subpart J in the event that additional sites are identified which exhibit extremely rugged terrain and high annual precipitation, leading to a similar inability to divert natural stream flow and stormwater runoff. EPA also solicits any information or data available on alternative tailings disposal technologies that could be used at the A–J site. Such technologies may include dewatered tailings discharge to deep marine waters, backfilling of the mine with dewatered tailings and disposal of dewatered tailings on land without an impoundment. Cleaned tailings might also be used as road building materials in asphalt or used as construction material in concrete block or brick. The cleaned tailings could be fixed and stabilized with concrete prior to either mine or off-site land disposal.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. These consultation requirements build on those of Executive Order 12875 (''Enhancing the Intergovernmental Partnership'').

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Since this proposed rule is deregulatory in nature, the expected cost for implementation by the private sector is below $100 million. In addition, this proposal does not impose a mandate on any governmental entities since EPA is the permitting authority for this mine. As a result, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. For the same reason, EPA does not need to develop a plan for consultation of affected governmental entities pursuant to Section 204 of UMRA and Executive Order 12875.

During the preparation of this proposed rule, the Agency held consultations with State and local governments, industry, and public interest group representatives.

D. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is not a ''significant regulatory action'' because the rule is a deregulatory action and has the potential to create jobs while continuing to protect the environment.

E. Paperwork Reduction Act

This proposed rule contains no information collection activities. Therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 440

Environmental protection, Gold ore mining and dressing industry, Wastewater treatment, Waste treatment and disposal, Submarine tailings disposal, Metals, Water pollution control.

Dated: February 2, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, part 440 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 440—[AMENDED]

1. The authority citation for part 440 continues to read as follows:

Authority: Secs. 301, 304(b), (c) and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), (the Act), 33 U.S.C. 1311, 1314(b), (c) and (e), 1316, 1317, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4.

2. Section 440.100 is amended by adding paragraph (e) to read as follows:

§ 440.100 Applicability; description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

* * * * *

(e) The provisions of this subpart shall not apply to discharges of dewatered tailings from the Alaska-Juneau mine and mill near Juneau, Alaska.

3. Section 440.132 is amended by adding paragraph (k) to read as follows:

§ 440.132 General definitions.

* * * * *

(k) *Dewatered tailings* means that portion of a mill tailings slurry wastestream from which approximately 75 percent or more of the water fraction has been removed for recycling through the mill.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 6]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee on Regulatory Negotiation Public Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Schedule of Advisory Committee meetings.

SUMMARY: This document announces a change in the time and location of the next series of meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Monday-Wednesday, March 4–6, 1996; Tuesday-Thursday, April 23–25, 1996.

ADDRESSES: The March and April 1996 meetings will be held at the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. Meetings will begin at 9:00 a.m., except for the meeting of Monday, March 4, 1996, which will begin at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator*: Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: On December 21, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final schedule for its 1996 meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) (60 FR 66247). The document announced that the meetings for March 4–6, 1996, would begin at 9:00 a.m., and be held at NHTSA headquarters. However, at its January meetings, the Committee decided that the meetings for March 4–6, 1996, would be held at the Offices of the Federal Mediation and Conciliation Service, as stated above, and that the meeting scheduled for Monday, March 4, 1996, would commence at 10:00 a.m.

The meetings are open to the public.

Issued: February 6, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2996 Filed 2–9–96; 8:45 am]
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