AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-18-81
Vol. 46 No. 159
Pages 41753-42058

federal register

Tuesday
August 18, 1981

Highlights

41833 **Food Assistance Programs** USDA/FNS announces changes in "national average payments" and "maximum reimbursement rates" for the National School Lunch and Breakfast Programs.

41834 USDA/FNS announces reimbursement rate for half-pints of milk served to non-needy children by participants in the Special Milk Program for Children only.

41786 **Nuclear Power Plants and Reactors** NRC proposes amendment of financial qualifications for domestic licensing of production and utilization facilities.

41902-42042 **Securities** SEC issues proposals on integrated disclosure system. (Part II of this issue) (8 documents)

41791 SEC proposes regulation on offers and sales of certain securities without registration.

41766 SEC amends rules, forms and disclosure requirements under the registration exemptions of Regulation A.

41771 SEC interprets applicability of Investment Advisers Act to financial planners, pension consultants and others who provide investment advisory services.

41763 **Federal Associations** FHLBB removes geographic restrictions on establishment and use of remote service units.

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Highlights

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

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The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

41775 **Drug Traffic Control** Justice/DEA permits importation of approved narcotic raw materials from Turkey, India, Yugoslavia, France, Poland, Hungary and Australia.

41776 **Passports and Visas** State amends regulations on validity of nonimmigrant visas.

41840 **Cable Television** Copyright Royalty Tribunal requests comments on petition for royalty fee adjustment proceeding.

41820 **Radio** FCC proposes amendments to Auxiliary Broadcast Service regulations.

41889 **Government Procurement** OMB/FPPO issues policy on procedures, advance planning and end-of-year purchases.

41757 **Nuts** USDA/AMS revises voluntary standards for grades of mixed nuts in the shell and updates requirements for pecans in the shell.

41759 **Fruit Juices** USDA/AMS revises voluntary standards for grades of grapefruit juice.

41838, 41839 **Imports** CITA adjusts restraint levels for certain textile products from Costa Rica and Macau and amends levels for certain cotton apparel products from Sri Lanka. (3 documents)

41897 **Sunshine Act Meetings**

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41902 **Part II, SEC (8 documents)**

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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 month.

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Approval of Incorporations by Reference

AGENCY: Office of the Federal Register.

ACTION: Approval of incorporations by reference.

SUMMARY: The Director of the Federal Register has received a request from the Securities and Exchange Commission to approve materials for incorporation by reference into 17 CFR Chapter II. This document contains a table of items that have been approved by the Director.

EFFECTIVE DATE: The Director of the Federal Register approves the following incorporations by reference effective August 12, 1981 to April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Anne Lawson, (202) 523–4534.

SUPPLEMENTARY INFORMATION: The materials included in the table below are incorporated by reference in the **Federal Register** and Code of Federal Regulations under 5 U.S.C. 552(a) and 1 CFR Part 51. These procedures provide that material approved for incorporation by reference by the Director of the Federal Register has the same legal status as if it were published in full in the **Federal Register.**

Approved:

John E. Byrne,

Director of the Federal Register.

17 CFR Chapter II (Parts 239, 249, 259, 269, 274, 279, and 301)—Securities and Exchange Commission

Statement of Availability

Copies of the forms incorporated by reference have been filed with the Office of Federal Register and, in addition, copies may be obtained on request addressed to the Securities and Exchange Commission, Washington, D.C. 20549. The forms may also be inspected at that address, and at the Commission's regional and branch offices whose addresses appear at § 200.11 of this chapter.

Revisions or amendments of the forms may be issued from time to time by the Securities and Exchange Commission. A file of such amendments or revisions is maintained and made available for inspection at the Securities and Exchange Commission, Washington, D.C. 20549.

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[1] Section where identified and described.

[FR Doc. 81-24217 Filed 8-17-81; 8:45 am]

BILLING CODE 1505-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 722

Marketing Quota Regulations and Recordkeeping Requirements for the 1972 and Succeeding Crops of Extra Long Staple Cotton

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the regulations at 7 CFR 722.73(c). The extra long staple (ELS) cotton penalty rate is published each year in the **Federal Register** and later codified in the Code of Federal Regulations. In order to avoid amending the Code of Federal Regulations each time the penalty rate is changed, the annual penalty rate determination will no longer be codified in the Code of Federal Regulations beginning with the 1981 crop of extra long staple (ELS) cotton but will be published in the notice section of the **Federal Register.**

EFFECTIVE DATE: August 18, 1981.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, ASCS, USDA, 3644 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7633.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures required by Executive Order 12291 and Secretary's Memorandum 1512-1, and has been classified not a "major rule." It has been determined that this rule will not result in annual effect on the economy of $100 million or more. I have determined that it is impractical to follow the public rulemaking requirements of 5 U.S.C. 533, with respect to this rule since this action merely removes from the Code of Federal Regulations the penalty rates for ELS cotton which are published annually. Effective with the 1981 crop of ELS cotton, the penalty rate will appear only as a notice in the **Federal Register.** The penalty rates previously appearing in § 722.73 (c) remain applicable to the crop years to which they refer.

Final Rule

PART 722—COTTON

§ 722.73 [Amended]

Accordingly, the regulations at 7 CFR § 722.73(c) are hereby removed from the Code of Federal Regulations.

(Secs. 346, 347, 373, 375, 63 Stat. 674, as amended, 63 Stat. 675, as amended, 63 Stat. 675, as amended, 52 Stat. 65, 66, as amended, 7 U.S.C. 1346, 1347, 1373, 1375)

Signed at Washington, D.C. on August 10, 1981.

Everett Rank,

Administrator, ASCS.

[FR Doc. 81-23981 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Increase in Payment Rates for Services With Respect to Reserve Tonnage Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation increases the rates of payment to raisin handlers for receiving, storing, fumigating, and handling reserve tonnage raisins during and beyond the crop year of acquisition, and to persons furnishing boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition. The rule is based upon a recommendation of the Raisin Administrative Committee, which works with the Department in administering the marketing agreement and order program for California raisins.

EFFECTIVE DATE: August 18, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "nonmajor" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 19 handlers.

Information collection (reporting and recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such OMB clearance has been obtained.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) costs involved in providing for these services such as labor, employee benefits, plant and administrative overhead and equipment have increased significantly, and other persons and handlers should be paid at the increased rates as soon as possible; and (2) postponing the effective date of this action would serve no useful purpose.

Notice of this action was published in the **Federal Register** on July 17, 1981 (46 FR 37054). In that notice interested persons were given the opportunity to submit comments until July 31, 1981. None was received.

Increasing the rates necessitates changing § 989.401(A)(1), (b), and (c) of Subpart—Schedule of Payments (7 CFR 989.401; 45 FR 11461). This action will be taken under § 989.66(f) of the marketing agreement and Order No. 989 (7 CFR 989), both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This action increases handler payment rates for: (1) Receiving, storing, fumigating, and handling reserve tonnage raisins during the crop year of acquistion from $29 to $32.50 per ton; and (2) holding reserve tonnage raisins beyond the crop year of acquistion from $1.45 to $1.62 per ton for each month of the three-month period ending November 30, and from 75 cents to 84 cents per ton each month of the next nine months.

The rule also increases the box rental rates that the Committee pays to persons who furnish storage containers

in which reserve tonnage raisins are held beyond the crop year of acquisition. The increased rates are as follows: (1) For boxes with a capacity of less than 1,000 pounds the rate is increased from one and two-thirds cents per day, not to exceed a total payment of 50 cents per box per year, to two and one-half cents per day, not to exceed a total payment of 75 cents per box per year; and (2) for bins with a capacity of 1,000 pounds or more the rate is increased from thirteen and one-third cents per day per bin, not to exceed a total of $4 per bin per year, to twenty cents per day per bin, not to exceed a total of $6 per bin per year.

The current rates for receiving, storing, fumigating and handling reserve tonnage raisins during and beyond the crop year of acquisition have been effective since February 21, 1980. The box rental rates have been effective since September 1, 1975. Since then costs for all these services have increased significantly. This determination is based upon detailed cost data received by the Committee from handlers and other persons providing these services.

Funds to pay these costs are deducted from proceeds from the sale of reserve tonnage raisins held by handlers for the account of the Committee. Net proceeds from such sales are remitted to equity holders in the reserve pool.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other information, the amendment of § 989.401(a)(1), (b) and (c) of Subpart—Schedule of Payments (7 CFR 989.401; 45 FR 11461), as hereinafter set forth, to make these rate increases is approved.

Therefore, § 989.401 is amended by revising paragraphs (a) (1), (b), and (c) to read as follows:

Subpart—Schedule of Payments

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition—(1) Receiving, storing, fumigating, and handling.* Each handler shall, beginning June 11, 1981, of the 1980–81 crop year be compensated at the rate of $32.50 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling of the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by him for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2) * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $1.62 per ton per month, or any part thereof, for each month of the three-month peroid ending November 30, and 84 cents per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 15 and the following September 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of 75 cents per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, twenty cents per day per bin, not to exceed to total of $6 per bin per year. For purposes of this paragraph, "box" means any container with a capacity of less than 1,000 pounds and "bin" means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding September 1.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674)

Dated: August 12, 1981.

James B. Wendland,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-23932 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1002

[Milk Order No. 2; Docket No. AO-71-A73]

Milk in New York-New Jersey Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changing present provisions of the New York-New Jersey milk order is based on industry proposals which were considered at a public hearing held in June 1980. The amendments increase the transportation allowances for milk handlers to reflect more nearly the cost of assembling milk from dairy farms and transporting it to plants for processing. The amendments are necessary to reflect current marketing conditions and to insure orderly marketing in the New York-New Jersey area.

EFFECTIVE DATE: The order provisions set forth herein shall become effective September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 13, 1980; published May 16, 1980 (45 FR 32321).

Recommended Decision: Issued March 12, 1981; published March 18, 1981 (46 FR 17207).

Final Decision: Issued June 22, 1981; published June 25, 1981 (46 FR 33008).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held

upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1981. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Program Operations, was issued March 12, 1981, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued June 22, 1981. The changes affected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective September 1, 1981, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interest of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period where engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The introductory text preceding paragraph (a) in § 1002.50a is revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

2. In § 1002.51, paragraph (c) is revised to read as follows:

§ 1002.51 Transportation differentials.

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule.

A—freight zone (miles)	B—classes I-A and I-B (cents per cwt)	C—class II (cents per cwt)
1–10	+59.0	+8
11–20	+56.8	+8
21–25	+54.6	+8
26–30	+54.6	+7
31–40	+52.4	+7
41–50	+50.2	+7
51–60	+48.0	+6
61–70	+45.8	+6
71–75	+28.6	+6
76–80	+28.6	+5
81–90	+26.4	+5
91–100	+24.2	+5
101–110	+22.0	+4
111–120	+19.8	+4
121–125	+17.6	+4
126–130	+17.6	+3
131–140	+15.4	+3
141–150	+13.2	+3
151–160	+11.0	+2
161–170	+8.8	+2
171–175	+6.6	+2
176–160	+6.6	+1
181–190	+4.4	+1
191–200	+2.2	+1
201–210	0.0	0
211–220	−1.5	0
221–225	−3.0	0
226–230	−3.0	−1
231–240	−4.5	−1
241–250	−6.0	−1
251–260	−7.5	−2
261–270	−9.0	−2
271–275	−10.5	−2
276–280	−10.5	−3
281–290	−12.0	−3
291–300	−13.5	−3
301–310	−15.0	−4
311–320	−16.5	−4
321–325	−18.0	−4
326–330	−18.0	−5
331–340	−19.5	−5
341–350	−21.0	−5
351–360	−22.5	−6
361–370	−24.0	−6
371–375	−25.5	−6
376–380	−25.5	−7
381–390	−27.0	−7
391–400	−28.5	−7
401 and over	−30.0	−8

* * * * *

§ 1002.53 [Amended]

3. In § 1002.53, the reference "§§ 1002.51 and 1002.82(b)" is changed to "§ 1002.51".

4. In § 1002.80, paragraphs (a)(2) and (3) are revised to read as follows:

§ 1002.80 Time and rate of payments.

(a) * * *

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk (except as specified in paragraph (a)(3) of this section);

(3) For milk received in a bulk tank unit and for which transportation was provided by the handler or at his expense, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge. This charge may include any farm-to-first plant

transportation costs for which the handler was not reimbursed through the transportation credit pursuant to § 1002.55, but such charge shall be reduced by the amount that the class use location value of milk at the plant of first receipt exceeds its class use location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred. Any such deduction, plus the transportation credit, and plus the amount of the increase in class use location value of the milk at the plant compared to the unit shall not exceed the actual transportation costs incurred. Any such deduction also must be made by the handler not later than the date on which the producer is required to be paid for such milk. If authorization for such deduction is cancelled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler; and

* * * * *

§ 1002.82 [Amended]

5. In § 1002.82, paragraph (b) is removed.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674) Effective date: September 1, 1981

Signed at Washington, D.C., on August 13, 1981.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 81-24060 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service[1]

Food Safety and Quality Service

7 CFR Part 2851

U.S. Standards for Grades of Mixed Nuts in the Shell[2]

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary U.S. Standards for Grades of Mixed Nuts in the Shell and updates requirements for pecans in the shell. This action has been taken at the request of the major mixed nut packaging firms, users of USDA's voluntary continuous inspection program. The firms requested this revision to bring the grade standards in line with current industry practices and to provide consumers with an improved product.

EFFECTIVE DATE: August 18, 1981.

FOR FURTHER INFORMATION CONTACT: Michael A. Canon, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2093.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this rule is not a major rule under Executive Order 12291. No substantial new costs are being imposed on the affected industry. The rule represents an adjustment of nut size requirements to enhance current industry marketing capabilities. Consequently, it will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

It is found that good cause exists for making this document effective upon publication in the **Federal Register** (5 U.S.C. 553) because: (1) Mixed nut packers purchase imported Brazil nuts in August for use in the peak fall marketing season, (2) mixed nut packers normally purchase USDA grade labeled packaging material in August for the upcoming marketing season, and (3) postponing the effective date of the final rule would serve no useful purpose and could cause administrative problems in the application of the U.S. Standards for Grades of Mixed Nuts in the Shell.

Background

The proposed revision of the voluntary grade standards for mixed nuts in the shell was published in the **Federal Register** on May 15, 1981 (46 FR 26787). At that time the responsibility for U.S. grade standards was assigned to the Food Safety and Quality Service. The Agricultural Marketing Service now has this responsibility.

These grade standards establish size, quality, and mix requirements for in-shell pecans, filberts, walnuts, almonds, and Brazil nuts. The size and quality requirements listed in the standards for mixed nuts are explained in the U.S. standards for each type of nut.

The three major mixed nut packaging firms, packaging approximately 70 percent of the mixed nuts marketed domestically, formally requested that the U.S. Standards for Grades of Mixed Nuts in the Shell be revised to change the mimimum size requirement of Brazil nuts from large (73/64 inches in diameter) to medium (59/64 inch in diameter) in the U.S. Extra Fancy grade.

According to representatives of the major mixed nut packers, larger size Brazil nuts are less consistent in quality than medium size ones and are generally in short supply. The Manaus area of Brazil produces most of the larger size Brazil nuts. Quality in the largen nuts from Manaus varies widely, and incidences of aflatoxin contamination from aspergillus mold have been frequent.

The three firms who have requested revision of the U.S. standards are under contract to use USDA continuous inspection during product packaging. Users of the voluntary continuous inspection program may legally label consumer-size film bags of mixed nuts with a USDA grade shield and/or the statement "packed under continuous USDA inspection." Inspectors are present during packaging, and quality is continuously monitored. Users of the service pay a fee to cover the cost of inspection. Advertising by these firms highlights the quality assurance of a grade labeled product.

The Agricultural Marketing Act of 1946 requires that the Department, in cooperation with industry, keep the requirements of the voluntary grade standards in line with current industry cultural and marketing practices. Although this revision would provide consumers with a smaller size Brazil nut, the consistently higher quality of the medium size nut would benefit consumers. Quality requirements have

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[1] The Commodity Services Program of the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) was transferred to the Agricultural Marketing Service of USDA by USDA Secretary's Memorandum 1000–1, issued June 17, 1981. A notice detailing the agencies' reorganization is being drafted for later publication.

[2] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

been updated for pecans to reflect the 1976 revision of the U.S. Standards for Grades of Pecans in the Shell.

Comments on Proposal

Four comments were received in response to the Department's proposal to revise the U.S. Standards for Grades of Mixed Nuts in the Shell. The proposals to change the minimum size of Brazil nuts in the U.S. Extra Fancy grade and to update the quality factors for pecans were endorsed by the commenters. Those commenting included several major mixed nut packers who use grade labeling on consumer packages and users of the USDA Continuous Inspection Program.

The mixed nut packers expressed opposition to the Department's proposal to revise grade nomenclature to conform with the Uniform Grade Nomenclature Policy adopted in 1976. The policy states that upon revision, amendment, or development, uniform grade names (U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. No. 3) will be used except in situations that compliance would be considered inappropriate or unreasonable. The present grade nomenclature for mixed nuts in the shell is U.S. Extra Fancy, U.S. Fancy, and U.S. Commercial/U.S. Select.

The mixed nut packers point out that substantial investments have been made in advertising mixed nuts as being USDA grade labeled to assure the consumer of a quality product. To change grade nomenclature at this time, they state, would place undue financial burdens on them to educate the consumer concerning the new USDA names as well as to purchase new film packaging material. The firms commenting state they currently have several years of packing material printed with labels and grades.

They also object to grade labeling mixed nuts that are currently labeled U.S. Commercial or U.S. Select as U.S. No. 2 quality when in fact each of the species of nuts required to be in mixed nuts must be U.S. No. 1 in quality, or a high percentage of U.S. No. 1 quality. The Uniform Grade Nomenclature Policy describes U.S. No. 2 as the "intermediate quality between U.S. No. 1 and U.S. No. 3". The mixed nut industry rightfully considers U.S. 2 quality to be less than U.S. No. 1 and to grade label their product below its certified quality due to a change only in nomenclature is unreasonable in their eyes.

The Department considers the industry's objections to applying the Uniform Grade Nomenclature Policy appropriate and reasonable, so this revision does not change the original grade nomenclature.

PART 2851—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

Therefore, Subpart—United States Standards for Grades of Mixed Nuts in the Shell (7 CFR 2851.3520–2851.3523) is revised to read as follows:

Subpart—United States Standards for Grades of Mixed Nuts in the Shell

General

Sec.
2851.3520 General.

Grades

2851.3521 U.S. Extra Fancy.
2851.3522 U.S. Fancy.
2851.3523 U.S. Commercial or U.S. Select.

Subpart—United States Standards for Grades of Mixed Nuts in the Shell

General

§ 2851.3520 General.

Any lot of mixed nuts in the shell which is classified as meeting the requirements of a U.S. grade for mixed nuts in the shell is required to conform to the applicable mixture, sizes, and grades set forth in one of the following grades. Each species of nut shall be graded individually in accordance with U.S. standards currently in effect for that species. The percentages in the mixture shall be determined on the basis of weight, and each species must conform to the minimum and maximum percentages specified in the mixture as set forth in section 2851.3521–2851.3523. A composite sample shall be drawn to determine mixture, size, and grade. When any species in a lot fails to meet the applicable requirements as to mixture, size, or grade prescribed for a particular U.S. grade for mixed nuts in the shell, the entire lot fails to meet the requirements of such U.S. grade.

Grades

§ 2851.3521 U.S. Extra Fancy.

Nut species	Allowable mixture: Minimum percent	Allowable mixture: Maximum percent	Minimum size	Minimum grade
Almonds	10	40	28/64 inch (11.1 mm)	U.S. No. 1
Brazils	10	40	Medium	U.S. No. 1
Filberts	10	40	Long type varieties: 44/64 inch (17.5 mm)	U.S. No. 1
			Round type varieties: 49/64 inch (19.4 mm)	
Pecans	10	40	Extra Large	U.S. No. 1
Walnuts	10	40	Large	U.S. No. 1

§ 2851.3522 U.S. Fancy.

Nut species	Allowable mixture: Minimum percent	Allowable mixture: Maximum percent	Minimum size	Minimum grade
Almonds	10	40	28/64 inch (11.1 mm)	U.S. No. 1
Brazils	10	40	Medium	U.S. No. 1
Filberts	10	40	Long type varieties: 44/64 inch (17.5 mm)	U.S. No. 1
			Round type varieties: 49/64 inch (19.4 mm)	
Pecans	10	40	Large	U.S. No. 1

Nut species	Allowable mixture: Minimum percent	Allowable mixture: Maximum percent	Minimum size	Minimum grade
Walnuts	10	40	Medium	U.S. No. 1

§ 2851.3523 U.S. Commercial or U.S. Select.

Nut species	Allowable mixture: Minimum percent	Allowable mixture: Maximum percent	Minimum size	Minimum grade
Almonds	5	40	28/64 inch (11.1 mm)	U.S. No. 1
Brazils	5	40	Medium	U.S. No. 1
Filberts	5	40	Long type varieties: 34/64 inch (13.5 mm) Round type varieties: 45/64 inch (17.9 mm)	U.S. No. 1
Pecans	5	40	Medium—(a) External quality: U.S. No. 1 (b) Internal quality: 75 percent U.S. No. 1 quality with not more than 10 percent seriously damaged kernels, including therein not more than 7 percent which are rancid, moldy, decayed, or injured by insects, including not more than one-half of one percent live insects inside the shell.	
Walnuts	5	40	Baby—(a) External quality: 85 percent U.S. No. 1 quality. (b) Internal quality: 85 percent U.S. No. 1 quality, except that the lot need only meet the requirements for U.S. No. 2 grade for kernel color; with not more than 8 percent seriously damaged kernels, including therein not more than 5 percent which are damaged by insects..	

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624)

Done at Washington, D.C. on August 13, 1981.

William T. Manely,

Deputy Administrator.

[FR Doc. 81-24024 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service [1]

Food Safety and Quality Service

7 CFR Part 2852

United States Standards for Grades of Grapefruit Juice [2]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Grapefruit Juice. The final rule was developed by the U.S. Department of Agriculture (USDA) at the request of the citrus industry. This rule revises the voluntary grade standards to: (1) permit the use of more mature grapefruit in the production of grapefruit juice; (2) permit the use of both pink-fleshed and white-fleshed grapefruit in the production of grapefruit juice; (3) replace dual grade nomenclature with single letter designation; and (4) combine the four current grade standards into a single format with easy-to-read tables.

Its effect will be to improve the standards and to promote orderly and efficient marketing of grapefruit juice.

EFFECTIVE DATE: September 17, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-6247.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined that this final rule is not major. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The effective dates for the current voluntary grade standards are: grapefruit juice, December 7, 1968; dehydrated grapefruit juice, July 1, 1964; concentrated grapefruit juice for manufacturing, May 22, 1954; frozen concentrated grapefruit juice, September 21, 1968.

The USDA was petitioned by the Florida Citrus Processors Association (FCPA) in 1977 to revise the quality standards for grapefruit juice. The Florida industry cited the present standard's bias against using ripe grapefruit as the reason for the requested change. Prior to proposing any change in the standards, a notice was published in the **Federal Register** (42 FR 51952), October 12, 1977, soliciting views and comments from interested persons until January 10, 1978. Over 175 letters and cards were received from grapefruit

[1] The Commodity Services Program of the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) was transferred to the Agricultural Marketing Service of USDA by USDA Secretary's Memorandum 1000-1, issued June 17, 1981. a notice detailing the agencies' reorganization is being drafted for later publication.

[2] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

juice processors, individual consumers, parents, boards of education, and other interested persons. A majority of those who responded to the notice favored the removal of color as a quality factor for determining the grade of grapefruit juice. The Florida citrus industry, through the FCPA, favored the retention of color in the grapefruit juice standards, but with the major emphasis to be placed on the quality factor of flavor.

On June 30, ,1978, a proposed rule was published in the **Federal Register** (43 FR 28511) to remove color as a quality factor for determining the grade of grapefruit juice. Comments could be filed until August 29, 1978.

The comments which were received on the proposed rule were divided on the issue as to whether color should be a quality factor or classified as to "pink," "white," or "mixed." The Florida citrus industry, through the FCPA, favored retention of color as a quality factor; however, some individual processors within the FCPA opposed the FCPA's stand. Processors from California, Texas, and Arizona favored the elimination of color as a quality factor. Consumers felt that color could be eliminated if it resulted in no substantial hazard to the quality of grapefruit juice at the marketplace.

Since the Florida citrus industry was divided on the issue of the importance of color in the grapefruit juice standards, a meeting was held in Winter Haven, Florida, October 25, 1978, and the citrus industry elected to perform a consumer impact study which would reveal consumers' opinions about grapefruit juice color. The State of Florida funded the study. A concurrent study was performed on consumers' reactions to bitterness in grapefruit juice.

On December 1, 1978, an Extension of Time was published in the **Federal Register**, (43 FR 56245) granting a delay for comments until June 1, 1979, to allow sufficient time for a consumer impact study to be conducted.

On December 15, 1978, the Federal Food and Drug Administration (FDA) proposed to establish Standards of Identity and Fill of Container for Grapefruit Juice in order to adopt, to the extent practicable, the Codex Standards for Grapefruit Juice. This proposal would affect directly, the USDA's quality standards for grapefruit juice; however, it would not resolve the issue of color as a "quality factor" or a "classified factor," as proposed by the USDA.

On July 2, 1979, a representative of the USDA met with the FCPA's grapefruit juice committee in Winter Haven, Florida. The FCPA stated that its stand on grapefruit juice had not changed from previously submitted correspondence in reply to the **Federal Register** publication. The FCPA recognized that some of its membership did not concur with the majority on grapefruit juice color, and these members were represented at the meeting. The FCPA requested a delay until the fall of 1979 to restate its position. Since several delays had been granted previously, further delay was denied.

A tabulation of the comments received on the grapefruit juice proposal indicated that the issue is misunderstood by consumers, divisively supported and opposed by the citrus industry, and opposed by official USDA Agricultural Commodity Graders.

Due to the widely differing opinions of interested persons, a second Notice of Proposed Rulemaking was published in the **Federal Register** on February 15, 1980 (45 FR 10356).

Comments were received from the California-Arizona Citrus League, the FCPA, the Texas Canners and Freezers Association, and five individual processors. Some responders commented on more than one portion of the proposed rule.

Five of the commenters asked for the removal of color as a quality factory. The FCPA favored retention of color as a quality factor; however, some individual processors within the association opposed the FCPA's position. The most common request of the citrus industry was to allow for the processing of more mature grapefruit, which has the best flavor but does not have a bright color. After evaluation of all the comments, the USDA has concluded that U.S. Standards for Grades of Grapefruit Juice should place less emphasis on color as a quality factor, but that color should be retained as a quality factor because the color may be affected by abuse during processing.

Four of the comments objected to reference to the Food and Drug Administration's (FDA) proposed Standards of Identity for Grapefruit Juice. Since the U.S. Standards for Grades of Grapefruit Juice must be based on the contents of the final FDA Standards of Identity for Grapefruit Juice, the USDA has determined that reference to the proposed FDA Standards of Identity for Grapefruit Juice is valid.

Three comments were received desiring minimum Brix requirements to be established for grapefruit juice (Table I) and grapefruit juice from concentrate (Table II). FDA Standards of Identity, Fill, and Quality require minimum levels to assure receipt of fair value. The USDA has determined that the requirement, "Meets FDA requirements" assures the consumer of a quality product.

One comment suggested a change in the definition of "good flavor" to read "including a slight amount of bitterness." Under the USDA definition for flavor, "good flavor" means grapefruit juice that is typical of freshly extracted juice from mature, well-ripened grapefruit. USDA concluded that there could be a slight amount of bitterness within this definition, so no specific inclusion of bitterness was necessary.

Another comment addressed the inclusion of "K-early hybrids" in the product description. The proposed FDA Standards of Identity for Grapefruit Juice describe grapefruit juice as juice from sound, mature grapefruit (Citrus Paradisi Macfadyen). The USDA description refers to the FDA Standards of Identity and takes the position that the FDA Standards of Identity are binding. Should an amendment to the FDA Standards of Identity include "K-early hybrids," the USDA definition would allow the use of the "K-early hybrids."

The other comments dealt with minor editorial changes. After consideration of these views, the USDA has concluded that no purpose would be served by these changes.

After review of the comments received and in order to promote the orderly marketing of grapefruit juice, USDA hereby revises the four grade standards for grapefruit juice to:

(1) Permit more variance in the color of grapefruit juice but retain color as a quality factor;

(2) Replace dual grade nomenclature (U.S. Grade A, U.S. Fancy; U.S. Grade B, U.S. Choice) with single letter grade designation (U.S. Grade A; U.S. Grade B); and

(3) Combine the four current grade standards into a single format with easy-to-read tables.

PART 2852—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Accordingly, various sections of 7 CFR Part 2852 are amended as set forth below:

Subpart—United States Standards for Grades of Grapefruit Juice [Removed]

§§ 2852.6121-2852.6133 [Reserved]

1. Subpart—United States Standards for Grades of Grapefruit Juice (7 CFR 2852.6121–2852.6133) is removed and the

sections, excluding the Subpart title, are reserved.

Subpart—United States Standards for Grades of Concentrated Grapefruit Juice for Manufacturing [Removed]

§§ 2852.3481-2852.3491 [Reserved]

2. Subpart—United States Standards for Grades of Concentrated Grapefruit Juice for Manufacturing (7 CFR 2852.3481—2852.3491) is removed and the sections, excluding the Subpart title, are reserved.

Subpart—United States Standards for Grades of Dehydrated Grapefruit Juice [Removed]

§§ 2852.3021-2852.3032 [Reserved]

3. Subpart—United States Standards for Grades of Dehydrated Grapefruit Juice (7 CFR 2852.3021–2852.3032) is removed and the sections, excluding the Subpart title, are reserved.

4. The title of Subpart—United States Standards for Grades of Frozen Concentrated Grapefruit Juice (7 CFR Part 2852) is amended to read "Subpart–United States Standards for Grades of Grapefruit Juice" and the sections thereunder (7 CFR 2852.1221–2852.1232) are revised to read as follows:

* * * * *

Subpart—United States Standards for Grades of Grapefruit Juice

Sec.

2852.1221 Product description.
2852.1222 Styles.
2852.1223 Color.
2852.1224 Definitions of terms.
2852.1225 Recommended sample unit size.
2852.1226 Grades.
2852.1227 Factors of quality and analysis.
2852.1228 Requirements for grades.
2852.1229 Sample size.
2852.1230 Lot requirements.
2852.1231 [Reserved].
2852.1232 [Reserved].

* * * * *

Subpart—United States Standards for Grades of Grapefruit Juice

§ 2852.1221 Product description.

(a) "Grapefruit juice" is the product represented as defined in the Standards of Identity for Grapefruit Juice (21 CFR 146.132), issued under the Federal Food, Drug, and Cosmetic Act.

(b) "Grapefruit juice from concentrate" is the product represented as defined in the Standards of Identity for Grapefruit Juice from Concentrate (21 CFR 146.132), issued under the Federal Food, Drug, and Cosmetic Act.

(c) "Frozen concentrated grapefruit juice" is the product processed by concentrating and preserving by freezing the product represented as defined in the Standards of Identity for Grapefruit juice (21 CFR 146.132), issued under Federal Food, Drug, and Cosmetic Act.

(d) "Concentrated grapefruit juice for manufacturing" is the product processed by concentrating and preserving by physical means the product represented as defined in the Standards of Indentity for Grapefruit juice (21 CFR 146.132), issued under the Federal Food, Drug, and Cosmetic Act.

(e) "Dehydrated grapefruit juice" is the product processed by concentrating and preserving by dehydration the product represented as defined in the Standards of Identity for Grapefruit Juice (21 CFR 146.132), issued under the Federal Food, Drug, and Cosmetic Act.

§ 2852.1222 Styles.

(a) Unsweetened.

(b) Sweetened (Sweetener added).

§ 2852.1223 Color.

(a) White or amber.

(b) Pink or red.

§ 2852.1224 Definitions of terms.

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Acid* means the percent, by weight, of total acidity (calculated as anhydrous citric acid).

(b) *Appearance* means the physical properties of grapefruit juice which are evaluated by the human eye.

(c) *Brix* means the percent, by weight, of grapefruit soluble solids and added sweetener, if any.

(d) *Brix-acid ratio* means the proportion of grapefruit soluble solids and added sweetener, if any, to acid.

(e) *Coagulation* means curdling of grapefruit juice.

(f) *Color.*

(1) "Good color" means the grapefruit juice is representative of juice expressed from mature, well-ripened grapefruit; and the grapefruit juice may show fading and lack of luster. Grapefruit juice that is good color may be given a score of 18 to 20 points.

(2) "Reasonably good color" means the grapefruit juice is slightly affected by scorching, oxidation, or caramelization. Grapefruit juice that is reasonably good color may be given a score of 16 or 17 points and may not be graded above "Grade B" regardless of total score.

(3) "Poor color" means the grapefruit juice fails to meet the requirements for "reasonably good color." Grapefruit juice that is poor color may be given a score of 0 to 15 points and is "Substandard" regardless of total score.

(g) *Defects* means juice cells, pulp, seeds or portions of seeds, specks, particles of membrane, core, peel, or any other distinctive features that adversely affect the appearance or drinking quality of grapefruit juice.

(1) "Practically free from defects" means defects in excess of that normally expected in grapefruit juice are not present. Grapefruit juice that is practically free from defects may be given a score of 18 to 20 points.

(2) "Reasonably free from defects" means the presence of defects does not seriously affect the appearance or drinking quality of grapefruit juice. Grapefruit juice that is reasonably free from defects may be given a score of 16 or 17 points and may not be graded above "Grade B" regardless of total score.

Grapefruit juice that fails the requirements for "reasonably free from defects" may be given a score of 0 to 15 points and is "Substandard" regardless of total score.

(h) *Flavor.*

(1) "Good flavor" means:

(i) *Grapefruit juice* that is typical of freshly extracted juice from mature, well-ripened grapefruit. The grapefruit juice may be slightly affected by processing, packaging or storage conditions.

(ii) *Grapefruit juice from concentrate* that it typical of freshly extracted juice from mature, well-ripened grapefruit. The grapefruit juice may be slightly affected by processing, packaging or storage conditions.

(iii) *Frozen concentrated grapefruit juice* that is typical of freshly extracted juice from mature, well-ripened grapefruit; and does not have more than a slight trace of bitterness.

(iv) *Concentrated grapefruit juice for manufacturing* that is practically free from traces of scorching, caramelization, oxidation, and terpene.

(v) *Dehydrated grapefruit juice* that is free from terpene, caramelization, oxidation, and rancid flavors.

Grapefruit juice that has a good flavor may be given a score of 54 to 60 points.

(2) "Reasonably good flavor" means:

(i) *Grapefruit juice* that is materially but not seriously affected by bitterness, terpene, processing, storage, or container flavor.

(ii) *Grapefruit juice from concentrate* that is materially but not seriously affected by bitterness, terpene, processing, storage, or container flavors.

(iii) *Frozen concentrated grapefruit juice* that is fairly typical of freshly extracted grapefruit juice, no more than slightly affected by bitterness, and is free from abnormal flavors of any kind.

(iv) *Concentrated grapefruit juice for manufacturing* that is no more than

slightly affected by scorching, caramelization, or oxidation. It may have a trace of terpene, but is free from any other abnormal flavors.

(v) *Dehydrated grapefruit juice* that is no more than slightly affected by scorching, caramelization, oxidation, or terpene flavors, but is free from any other abnormal flavors.

Grapefruit juice that has a reasonably good flavor may be given a score of 48 to 53 points and may not be graded above "Grade B" regardless of total score.

(3) "Poor flavor" means the grapefruit juice fails the requirements for "reasonably good flavor." Grapefruit juice that has a poor flavor may be given a score of 0 to 47 points and is "Substandard," regardless of total score.

(i) *Free and suspended pulp* means the particles of membrane, core, peel, and similar material that separate from suspension by centrifuging.

(j) *Gelation* means the formation of gel-like properties in the grapefruit juice.

(k) *Reconstituted juice* means the grapefruit juice obtained by mixing thoroughly one (1) part by volume of concentrated grapefruit juice with a specific volume of water.

(l) *Reconstitutes properly* means that upon mixing with water the concentrate dissolves readily.

(m) *Recoverable oil* means the volume of oil that may be recovered from grapefruit juice as determined by the "Official Methods of Analysis of the Association of Official Analytical Chemists."

(n) *Sampling unit* means a portion of grapefruit juice used for grading.

(o) *Terpene* means a specific flavor in oils and resins.

§ 2852.1225 Recommended sample unit size.

The requirements for all factors of quality are based on the following:

(a) The entire contents of a container;

(b) A representative portion of the contents of a container; or

(c) A combination of the contents of two or more containers.

§ 2852.1226 Grades.

(a) "U.S. Grade A" is the quality of grapefruit juice that:

(1) Meets the applicable requirements of Tables I through V; and

(2) Scores not less than 90 points.

(b) "U.S. Grade B" is the quality of grapefruit juice that:

(1) Meets the applicable requirements of Tables I through V; and

(2) Scores not less than 80 points.

(c) "Substandard" is the quality of grapefruit juice that fails to meet the requirements for "Grade B."

§ 2852.1227 Factors of quality and analysis.

The grade for a lot of product is based on observation and analysis of grapefruit juice and reconstituted grapefruit juice for the following quality and analytical factors:

(a) *Quality:*

(1) Appearance;

(2) Coagulation;

(3) Color;

(4) Defects;

(5) Flavor;

(6) Gelation;

(7) Reconstitution; and

(8) Total score points.

(b) *Analytical:*

(1) Brix measurement;

(2) Brix/acid ratio;

(3) Free and suspended pulp; and

(4) Recoverable oil.

§ 2852.1228 Requirements for grades.

Table I.—*Grapefruit Juice*

Factors	Grade A	Grade B
Quality:		
Appearance	Fresh grapefruit juice	Fails grade A.
Coagulation	None	Slight.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Score points	Minimum—90	Minimum—80.

Analytical	Unsweetened	Sweetened	Unsweetened	Sweetened
Brix: Minimum	Meets FDA requirements.			
Brix-acid ratio:				
Minimum	8:1	9:1	7:1	9:1
Maximum	14:1	14:1	None	None
Free and suspended pulp (percent by weight): Maximum	10		15	
Recoverable oil (percent by weight): Maximum	0.020		0.025	

Table II.—*Grapefruit Juice From Concentrate*

Factors	Grade A	Grade B
Appearance	Fresh grapefruit juice	Fails grade A.
Coagulation	None	Slight.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Score points	Minimum—90	Minimum—80.

Analytical	Unsweetened	Sweetened	Unsweetened	Sweetened
Brix: Minimum	Meets FDA requirements.			
Brix-acid ratio:				
Minimum	8:1	9:1	7:1	9:1
Maximum	14:1	14:1	None	None
Free and suspended pulp (percent by weight): Maximum	10		15	
Recoverable oil (percent by weight): Maximum	0.020		0.025	

Table III.—*Frozen Concentrated Grapefruit Juice*

Factors	Grade A	Grade B
Quality:[1]		
Appearance	Fresh grapefruit juice	Fails grade A.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Gelation	Slightly	Materially.
Reconstitution	Reconstitutes properly	Reconstitutes properly.
Score points	Minimum—90	Minimum—80.

[1] Reconstituted prior to grading.

Analytical	Unsweetened	Sweetened	Unsweetened	Sweetened
Brix of concentrate:				
Minimum (degrees)	38.0	38.0	38.0	38.0
Maximum (degrees)	42.0	48.0	42.0	48.0
Brix-acid ratio:				
Minimum	9:1	10:1	7:1	8:1
Maximum	14:1	13:1	16:1	13:1

Analytical	Unsweetened	Sweetened	Unsweetened	Sweetened
Free and suspended pulp (percent by weight-reconstituted juice): Maximum		10		10

Factors	Grade A		Grade B	
	Unsweetened	Sweetened	Unsweetened	Sweetened
Recoverable oil (percent by weight): Maximum.	0.020		0.020	
Seeds and portions of seeds (reconstituted juice):	Slightly detract		Materially detract.	
Pass through round perforations—3.2 mm (0.125 in). Fail to pass through round perforations 3.2 mm (0.125 in).			Practically none	

Table IV.—*Concentrated Grapefruit Juice for Manufacturing*

Factors	Grade A	Grade B
Quality: [1]		
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Gelation	Slightly	Materially.
Reconstitution		Reconstitutes properly
Score points	Minimum—90	Minimum—80.
Analytical:		
Brix-acid ratio: Minimum	6:1	5.5:1
Free and suspended pulp (percent by weight-reconstituted juice): Maximum.	10	12.

[1] Reconstituted prior to grading.

Table V.—*Dehydrated Grapefruit Juice*

Factors	Grade A	Grade B
Quality: [1]		
Appearance	Fresh grapefruit juice	Fails grade A.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Reconstitution		Reconstitutes properly
Score points	Minimum—90	Minimum—80.

[1] Reconstituted prior to grading.

Analytical [1]	Unsweetened	Sweetened	Unsweetened	Sweetened
Brix: Minimum	Meets FDA Requirements			
Brix-acid ratio:				
Minimum	8:1	9:1	7:1	9:1
Maximum	14:1	14:1	None	None
Recoverable oil (percent by volume): Maximum	0.020		0.025	

[1] Reconstituted prior to analysis.

§ 2852.1229 Sample size.

The sample size to determine acceptance with the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 2852.1 through 2852.83).

§ 2852.1230 Lot requirements.

A lot of grapefruit juice is considered as meeting requirements for quality if:

(a) The requirements specified in Tables I, II, III, IV, and V, as applicable, are met; and

(b) The sampling plans and procedures in 7 CFR 2852.1 through 2852.83 are met.

§ 2852.1231 [Reserved]

§ 2852.1232 [Reserved]

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(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended; (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on August 13, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations

[FR Doc. 81-24048 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 81-437]

Geographic Restrictions on Remote Service Unit Operations

Dated: August 6, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations by removing geographic restrictions on the establishment and use of remote service units ("RSUs") by federally chartered savings and loan associations and federally chartered mutual savings banks ("Federal associations").

EFFECTIVE DATE: August 6, 1981.

FOR FURTHER INFORMATION CONTACT: K. Diane Boyle, Office of Industry Development (202-377-6720), or Michael D. Schley, Office of General Counsel (202-377-6444), Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 5(a) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)) authorizes the Federal Home Loan Bank Board to regulate RSU operations of Federal associations. The Board's regulations at 12 CFR 545.4-2(c) currently impose the following geographic restrictions limiting RSU operations to the state of a Federal association's home office or the primary service area of any of its out-of-state branch offices:

(c) *General.* A Federal association may establish or use RSUs and participate with others in RSU operations in the State of its home office, in the county in which any of its out-of-State branches are located, or, where an out-of-state branch is located

in a Standard Metropolitan Statistical Area (SMSA), in that portion of the SMSA located in the same State as the out-of-State branch.

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By Resolution No. 81–296 of May 29, 1981, 46 FR 30114, June 5, 1981, the Board proposed to remove the existing geographic restrictions and permit Federal associations to engage in RSU operations on an interstate basis. The Board cited the present competitive disadvantage of Federal associations in this area, and questioned the need to impose branching-type restrictions on the use of RSU facilities.[1] The comment period for the proposal ended July 7, 1981.

Forty-two commenters responded to the Board's solicitation of public comment. The comment letters were submitted by 29 Federal associations, 4 thrift industry trade associations, 4 commerical banks, 2 commercial bank trade associations, an association representing the electronic funds transfer ("EFT") industry, the operator of an interstate remote EFT terminal network, and the United States Department of Justice. Thirty-three commenters (79%) endorsed the proposal for interstate RSU authority; 9 commenters (21%) either recommended against any change in Federal associations' current RSU authority or suggested modifications to the Board's proposal. A summary of these comments, together with the Board's responses, follows.

1. Potential Benefits of Providing RSU Services to Existing out-of-State Customers

Several commenters emphasized the value of interstate RSU authority for serving existing out-of-state customers of a Federal association.[2] Twelve Federal associations noted that many of their customers live or work in another state, or regularly shop or travel in another state. One association commented that "one of the biggest benefits of RSUs is their availability during nonwork hours"; yet this benefit is lost to an urban association's customers who live in another state. An association located in Pennsylvania commented:

Within one hour, our customers can travel to several neighboring states for recreational reasons. However, their financial needs do not end at the Pennsylvania border.

One association that lends to customers across state lines mentioned that placement of RSUs near those customers would provide a fast and convenient method for those customers to make monthly loan payments; another association noted that RSUs provide a less labor-intensive alternative to travelers' convenience withdrawals, which are currently available to Federal association customers on an interstate basis (12 CFR 545.4(b)).

The operator of a shared remote EFT terminal network in the State of Washington described how the Board's current restrictions on RSU operations of Federal associations also hinder the establishment of remote EFT terminals in Oregon for the customers of other financial institutions that use the network. Furthermore, that commenter noted that it would be confusing for customers of one member Federal association in Washington, which has branch offices in Oregon, to be able to use those RSUs in Oregon that are located within the primary service area of a branch office but not other RSUs in Oregon that are part of the network.

The Board believes that interstate RSU authority will yield substantial, operational benefits both to Federal associations and their customers. RSUs enable routine customer account transactions in a format not limited by the locations and operating hours of branch offices. This convenience is particularly important to an out-of-state customer who would otherwise have to travel across state lines to a branch office, or use the mail to execute simple account transactions. In addition, an RSU program may provide a cost-efficient means for an association to serve its out-of-state customers.

2. Competitive Implications of Interstate RSU Authority

(a) *Federal associations vis-a-vis other institutions.* A major reason underlying the Board's proposal to allow interstate RSU operations of Federal associations was that the present geographic restrictions hinder Federal associations' ability to compete with other financial institutions in providing these services to their established customers. In its proposal, the Board pointed out the authority of national banks and credit unions, as well as many state-chartered commercial banks and thrift institutions, to engage in RSU-type activities on an interstate basis, and noted that numerous remote EFT terminal networks are already operating on a multistate regional basis in several parts of the country. The Board has concluded that the inability of Federal associations to participate in multistate EFT networks or establish competing RSU facilities constitutes a competitive disadvantage that should be eliminated. In addition, it is the Board's belief that the elimination of such impediments to open competition will facilitate the development of competitive markets consistent with the spirit of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221, 94 Stat. 132).

Five Federal associations confirmed the rationale for this conclusion by describing interstate remote EFT terminal networks established by competitors within the associations' own market areas. Typical of these commenters was one association located in a three-state standard metropolitan statistical area ("SMSA"), which noted that three commercial banks operating in the SMSA are already sharing an interstate automated teller machine ("ATM") system.

An additional factor to be considered is the emerging phenomenon of banking-type services offered on an unrestricted interstate basis by nondepository institutions such as investment firms, nationwide retailers, money market mutual funds, and travel and entertainment companies. To a varying degree, these institutions compete directly with Federal associations for deposit and loan customers, and some are rapidly developing nationwide EFT systems capable of providing services identical to those available through RSU devices. These nondepository competitors already enjoy a competitive advantage since they are not subject to reserve requirements and deposit ceilings imposed on depository institutions. Continued geographic restriction of Federal association RSU operations would further aggravate the competitive disparity between regulated and unregulated entities.

In contrast, five commenters from the commercial banking industry criticized the proposed rule as going beyond competitive parity. These commenters pointed out that the proposed rule technically exceeds the present authority of national banks to deploy or use customer-bank communications terminals ("CBCTs"), and that many state chartered banks are prevented by state laws from deploying or using RSU-type devices out-of-state.

The matter of parity with national banks turns on a technical legal

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[1] It has been judicially determined that Federal association RSUs are not branch offices. Bloomfield Fed. Sav. & Loan Ass'n v. American Community Stores Corp., 396 F. Supp. 384 (D. Neb., 1975).

[2] A recent study of EFT in the banking and thrift industries concludes that consumer usage of EFT services is "growing rapidly." Electronic Money Index: A Quantitative Measurement of the Nationwide Growth of EFT (Electronic Money Council, October, 1980), at 2.

distinction. By opinion of the Chief Counsel, Office of the Comptroller of the Currency, national banks may use a CBCT located across state lines "if (1) the compensation for its use is on a transactional fee basis and (2) such use does not give to national banks a competitive advantage over state banks situated in those states." [3] However, national banks are prevented by the McFadden Act from owning or renting CBCTs in other states.[4] Thus to the extent that the proposed rule would permit Federal associations to own or rent RSUs in other states, it would give Federal associations greater technical authority than national banks have in this area.

On this basis, four commenters recommended modifications of the proposed rule that would give Federal associations parity with national banks.[5] The Board has rejected these proposed modifications for several reasons. It is probably impossible to draft a rule that would give Federal associations authority identical to that of national banks.[6] A more important consideration is that authority for Federal associations to both own and use RSUs is necessary to relieve their competitive disadvantage with depository and nondepository institutions that already engage in such activities, and such authority would give Federal associations the most flexibility in developing cost-efficient RSU systems that best suit the needs of their customers. These interests outweigh the technical disadvantage of national banks that would result from the proposed rule, particularly since, as a practical matter, national banks may currently participate in remote EFT terminal networks on an interstate basis. Furthermore, the Board does not believe that Federal associations should be arbitrarily subjected to the rules on interstate CBCT operations that apply to national banks. Those rules are the result of broad judicial interpretation of the McFadden Act, which does not apply to Federal associations. The Board believes it is more consistent with the spirit of deregulation for national banks to petition their regulators and Congress for relief from such restrictions than to request that the Board impose those restrictions on another industry.

Two commenters from the commercial banking industry objected to the proposed rule on the ground that it would give Federal associations greater authority than most state chartered commercial banks. The Board acknowledges that many state banks do not now have authority to deploy and use RSU-type devices on an interstate basis; however, for the reasons cited above dealing with the authority of national banks, the Board has determined to adopt the rule as proposed. Depository institutions, such as credit unions and national banks, as well as many nondepository institutions offering banking-type financial services, may establish remote EFT terminals on a nationwide basis. it would be inappropriate to prevent a Federal association from competing with such institutions merely because state laws restrict remote EFT terminal operations of state banks in the association's home state. The Board believes that any resulting disadvantage to state banks in those states may best be resolved by their legislatures or regulatory authorities.

With respect to concerns that interstate RSU operations of Federal associations will be injurious to competing depository institutions that partially or totally lack such authority, the Board expects that out-of-state RSUs will be used only to serve existing customers. (The limited nature of RSU services is discussed more fully below.) Thus, the technical advantage of Federal associations will constitute a difference in authority to provide a certain customer service, which difference will only indirectly affect the competition for customers. In light of the traditionally broader authority of commercial banks to offer customer services, the Board believes the new RSU authority will not disrupt the current balance of competition.

(b) *Regulatory flexibility analysis: impact on small associations.* Several commenters expressed concern that the proposed interstate authority might benefit large Federal associations to the detriment of smaller institutions. These comments reflected two separate concerns: (1) that large Federal associations will invade new out-of-state markets through RSU operations and take customers from smaller institutions in those localities; and (2) that the capital costs inherent in RSU operations will prevent small institutions from effectively competing with larger Federal associations that can afford to purchase and maintain RSU equipment.

The Board believes small local associations that are serving the thrift and home financing needs of their communities will not lose customers to out-of-state associations engaging in interstate RSU operations. One study of EFT services in the banking industry concluded: "Offering EFT services does not appear to help a bank increase its share of the market but this service may help a bank maintain its competitive position."[7] Two studies recently commissioned by Congress noted the limited services available through remote EFT terminals, and recommended that deployment of such terminals by banks not be subject to the geographic restrictions imposed on branch banking.[8] Thus, the Board expects RSUs will be used on an interstate basis only to serve existing customers who live, work, shop, or travel on a regular basis in another state.[9]

Some commenters, noting the capital costs involved in establishing an RSU system, expressed concern that small institutions might not be able to compete by establishing comparative systems. These comments ignore the option of shared systems, both proprietary and nonproprietary, which have been developed by EFT providers to meet the needs of small institutions. The Board believes the cost savings of an RSU Program will actually enhance a smaller institution's ability to serve its market.

Citing the possibility that small associations might be precluded from sharing interstate RSU systems owned or used by competitors, two commenters recommended mandatory sharing of RSU systems by Federal associations in order to avoid this problem. The Board recently deleted a "sharing" requirement from its RSU regulations. (*See*

[3] Office of the Comptroller of the Currency, Letters of the Chief Counsel, No. 153, July 7, 1980.

[4] 12 U.S.C. 36(c); Independent Bankers Ass'n of Am. v. Smith, 534 F. 2d 921 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 862 (1976).

[5] Two commenters recommended adoption of the legal restrictions applicable to CBCT operations of national banks under 12 U.S.C. 36(c), and two commenters suggested prohibition of interstate deposit-taking through RSUs.

[6] Many issues regarding national banks' authority in this area have not yet been resolved by the courts. For example, the above-quoted opinion of the Chief Counsel, Comptroller of the Currency, has not yet been tested by litigation. In addition, it is not yet settled whether a national bank may use on a transactional fee basis an out-of-state CBCT owned by an affiliate.

[7] D. Walker, An Analysis of Financial and Structural Characteristics of Banks with Retail EFT Machines (FDIC Working Paper No. 79-1) (1979), at 1.

[8] National Commission on Electronic Fund Transfers, EFT in the United States: Policy Recommendations and the Public Interest (1977), at 11, 12; Dept. of Treasury, Geographic Restrictions on Commercial Banking in the United States: The Report of the President (1981), at 19.

[9] One commenter speculated that future technological advances may make possible RSU services comparable to those available now only through branch offices, and thus expressed concern that interstate RSU authority would be the equivalent of interstate branching. However, the Board believes that RSU services are inherently limited and do not raise the same competitive implications as branching. *see* note 8, *supra*.

Resolution No. 81-209, Apr. 23, 1981, 46 FR 24531, May 1, 1981.) The requirement was deleted as unnecessary and duplicative, in light of Federal antitrust laws which prevent anticompetitive practices in this field.

Another commenter suggested that a phase-in schedule for interstate authority would give small associations time to establish competitive RSU programs. The Board opposes adoption of a phase-in schedule for interstate authority in the absence of sufficient justification. Such a delay would serve to prolong and aggravate the competitive disadvantage of Federal associations in this area.

A statement of the need for and objectives of the rule, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), appears elsewhere in the supplementary information. Because the rule does not impose new restrictions or burdens on the regulated industry, there are no tiering alternatives that would have less impact on small entities.

3. Authority of the Federal Home Loan Bank Board

Five commenters requested the Board not to act on the proposed rule, suggesting that Congress alone should determine the scope of Federal associations' RSU authority. One commenter opined that the authority to determine such issues rests only in Congress.

The Board is authorized by the Home Owners' Loan Act of 1933 (12 U.S.C. 1461 *et seq.*) to charter, supervise, and regulate Federal associations. This legislative mandate carries with it the responsibility and authority to regulate activities such as those in question here.[10]

This rule is intended to have the full effect and force of law, and to preempt any state law that might otherwise restrict the RSU operations of Federal associations.

Accordingly, the Board hereby amends Part 545, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Revise paragraph (c) of § 545.4-2, to read as follows:

[10] The Board is charged with overseeing "the powers and operations of every Federal savings and loan association from its cradle to its corporate grave." People v. Coast Fed. Sav. & Loan Ass'n., 98 F. Supp. 311, 316 (S.D. Cal. 1951); Meyers v. Beverly Hills Fed. Sav. & Loan Ass'n, 499 F. 2d 1145, 1147 (9th Cir. 1974).

§ 545.4-2 Remote service units (RSUs).

* * * * *

(c) *General.* A Federal association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account or establish a loan account.

* * * * *

(12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 81-24067 Filed 8-17-81; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6340]

Small Offering Exemption From Registration Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending the rules, forms, and disclosure requirements under Regulation A. Regulation A provides an exemption from the registration provisions of the Securities Act of 1933 which may be used by a variety of issuers to raise up to $1.5 million worth of securities during any twelve-month period. The amendments being adopted represent a comprehensive revision and updating of the disclosure requirements.

EFFECTIVE DATE: September 17, 1981.

FOR FURTHER INFORMATION CONTACT: Daniel Abdun-Nabi, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549, (202)/272-2644.

SUPPLEMENTARY INFORMATION CONTACT: On January 12, 1981 there was published in the **Federal Register** [46 FR 2637] a notice of proposed rulemaking proposing amendments to the rules, forms, and disclosure requirements under Regulation A (17 CFR 230.252 et seq., 239.90, and 239.96). Interested parties were given the opportunity to submit, not later than March 23, 1981, their views and recommendations regarding the proposal.

The Commission, after considering the views of the commentators, has determined to adopt the revisions to Regulation A substantially as proposed.[1] However, in response to the comments received, the following changes in the proposals are being effected:

(1) General Instructions now include a checklist of supplemental information which is required to be furnished under various Items of Part II.

(2) General Instruction B(b)(1) and (2) have been merged for clarity.

(3) Item 7 of Part 1 (Notification) has been renumbered for clarity.

(4) Item 9(a) has been clarified to state that the remuneration table is to contain annual remuneration for the last fiscal year and to require an indication as to the number of individuals included in the group figure.

(5) The first sentence in the lead-in paragraph of Item 13 has been revised to more clearly state that under specified circumstances a reconciliation report is required to be filed as part of the financial statements. Additionally, the Commission has revised the lead-in paragraph of the item to clarify that Regulation S-X is applicable to financial statements included in Regulation A offering circulars only where the issuer has filed or is required to file with the Commission certified financial statements.

(6) Item 13(a) has been amended to require the filing of a year-end balance sheet where the offering statement is filed subsequent to 90 days after the fiscal year-end date.

(7) The language of the second sentence in Item 13(b) has been revised to state that in the opinion of management all adjustments necessary for a fair statement of the results for the interim period have been included.

(8) The first sentence of Item 13(c) has been altered to include a specific reference to "significant subsidiary" and, in the interest of clarity, has been divided into two sentences. Additionally, the note following Item 13(c)(2) has been moved to follow Item 13(c)(1).

(9) The reference to Item 3 appearing in Item 1(b) of Part III—Exhibits has been corrected to read Item 2.

(10) Item 2(7) of Part III has been clarified to require, as an exhibit, only those plans described in the offering statement.

(11) Form 7-A Optional Form of Escrow has been amended to remove a

[1] In a companion release, the Commission is publishing for comment a new regulation governing the offers and sales of certain securities without registration. The proposed regulation, if adopted, would replace the existing limited offering exemptions contained in Commission Rules 146, 240, and 242. *See* Securities Act Release No. 6339 (August 7, 1981).

discrepancy between paragraph 4 of the Form and Rule 253(c).

Certain other recommendations have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons stated:

(1) Item 3(b) of Part II, which requires disclosures regarding potential dilution and tracks the language of proposed Regulation S–K Item 506,[2] was the subject of one comment recommending additional guidelines be adopted. The Commission has determined not to expand the disclosure requirements contained therein, believing that the item as currently drafted will elicit the necessary disclosures in most contexts, and where additional disclosure is necessary it will be provided pursuant to the comment process.

(2) One commentator suggested that in the context of a dividend reinvestment plan the information required by Items 9, 10, and 11 of Part II should not be required if previously furnished to stockholders under the Securities Exchange Act of 1934. The Commission, however, believes that the Regulation A offering statement should stand alone with respect to the nature and extent of the information provided without the need to reference other filings.

(3) One commentator suggested the accountant's report need comply with Article 2 of Regulation S–X only where the issuer is subject to the Securities Exchange Act of 1934. It was suggested that in all other circumstances the report need only comply with generally accepted auditing standards. The Commission believes that standards regarding the independence of auditors should not turn on whether or not the issuer is subject to the Securities Exchange Act of 1934. Further, the Commission sees no substantive benefit in adopting two levels of independence for auditors. Thus it was determined to continue to require that the auditor's qualifications and reports comply with Article 2 of Regulation S–X. The language in Item 13 has been clarified to reflect this position.

(4) The historic pro forma requirements of Part II Item 13(c) were criticized for creating reporting obligations beyond those called for by APB No. 16. The Commission believes APB No. 16 provides minimum disclosure requirements in the context of disclosures regarding past successions to other businesses and that pro forma historical financial statements are meaningful and necessary for an informed investment decision. For this reason the item has not been altered.

[2] Securities Act Release No. 6332 (August 6, 1981).

(5) Two commentators suggested the test for significant subsidiary in Item 13(c) be raised from 10 percent to 25 percent. The basis for the comment is that APB No. 16 already requires financial statement disclosure of the details of business combinations and that such an increase would give recognition to the generally small asset, revenue, and net income base Regulation A issuers normally have. The Commission, noting that APB No. 16 differs in some significant respects from Item 13(c), believes that the recommended increase in the threshold test for the reasons stated above would, at best, lead to dual standards for disclosure as between acquisitions between 10 percent and 25 percent and acquisitions in excess of 25 percent. At worst, such an amendment would be interpreted under APB No. 16 as requiring no disclosure for acquisitions between the 10 percent and 25 percent levels. The Commission does not believe such an amendment is in the interest of investors or would lead to any significant cost benefits for the issuer. For these reasons the Commission declines to raise the test for significant subsidiary as suggested by the commentators.

Accordingly 17 CFR 230.251 et seq., 239.90, and 239.96 are revised and adopted as set forth below.

Effective Date

These amendments shall become effective September 17, 1981.

Statutory Authority

The Commission hereby adopts Form 7–A and revisions to Form 1–A, Rule 251, and Rules 253 through 264 pursuant to the Securities Act of 1933, particularly sections 3(b) and 19(a).

(Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; 84 Stat. 1480; sec. 306(a)(1)(2)(3), 90 Stat. 56, 57; sec. 18, 92 Stat., 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

August 7, 1981.

Text of Amendments

The text of the amendments is set forth below.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Regulation A, § 230.251–§ 230.284, is amended as follows:

1. Section 230.251 is amended by adding the definition of "parent" to read as follows:

§ 230.251 Definitions of terms in this regulation.

* * * * *

Parent. A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

* * * * *

2. Section 230.253 is amended by revising paragraph (c)(1) to read as follows:

§ 230.253 Special requirements for certain offerings.

* * * * *

(c) * * *

(1) All securities issued prior to the filing of the offering statement, a proposal to be issued, for a consideration consisting in whole or in part of assets or services and held by the person to whom issued; and

* * * * *

3. Section 230.254 is amended by revising paragraphs (b) and (d)(1) to read as follows:

§ 230.254 Amount of securities exempted.

* * * * *

(b) The aggregate offering price of securities which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the offering statement or the offering price to the public, whichever is higher; *Provided,* That the aggregate gross proceeds actually received from the public for the securities offered hereunder shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (a) of this section.

* * * * *

(d) * * *

(1) Unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent offering statement to reduce the amount stated therein as proposed to be offered;

* * * * *

4. Section 230.255 is revised to read as follows:

§ 230.255 Filing of offering statement.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below five copies of the offering statement required by this Regulation which shall consist of Part I—Notification, Part II—Offering

Circular, and Part III—Exhibits. The Commission may, however, in its discretion, authorize the commencement of the offering prior to the expiration of such 10-day period upon a written request for such authorization.

(b) The offering statement shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the offering statement is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the offering statement, except where an officer of the issuer signs on behalf of the issuer. At the time of filing an offering statement, the applicant shall pay to the Commission at the Regional Office where the offering statement is filed a fee of $100.00, no part of which shall be refunded.

(c) The offering statement shall be filed with the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. The offering statement of any issuer having or proposing to have its principal business operations in Canada shall be filed with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the offering statement shall be filed with the Regional Office for the region in which such underwriter has its principal office.

(d) An amendment to any part of the offering statement will necessitate the filing of an amended offering statement which shall be signed in the same manner as the original offering statement. Five copies of such amendment shall be filed with the same Regional Office as the original offering statement at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

(e) An offering statement or any other document filed as a part thereof may be withdrawn upon application unless the offering statement is subject to an order under § 230.261 at the time the application is filed or becomes subject to such an order within 15 days (Saturdays, Sundays and holidays excluded) thereafter. *Provided* That an offering statement may not be withdrawn after any of the securities proposed to be offered thereunder have been sold. Any such application shall be signed in the same manner and filed with the same Regional Office as the offering statement.

(f) The manually signed original (or in the case of duplicate originals, one duplicate original) of all offering statements, reports, or other documents filed 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 cover 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 orginal shall be set forth on the first on the first page of the document.

(g) Each offering statement shall contain an exhibit index, which should immediately precede the exhibits filed with such offering statement. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (f) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed offering statement shall list the page in the filing where the exhibit index is located.

5. Section 230.256 is amended by revising paragraphs (a) introductory text, (a)(1), (b) and (c) introductory text, removing existing paragraph (d), and redesignating existing paragraphs (e) through (i) as paragraphs (d) through (h) revised to read as follows:

§ 230.256 Filing and use of the offering circular.

(a) Except as provided in paragraph (c) of this section and in § 230.257 of this part:

(1) No written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Part II of the offering statement is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

* * * * *

(b) In the case of transactions effected on a securities exchange, delivery of the offering circular (offering statement—Part II) shall be deemed to have been made if prior to such transactions a reasonable number of copies of the offering circular have been furnished to the exchange for delivery to any person or persons requesting copies thereof.

(c) Any written advertisement or other written communication, or any radio or television broadcast, which states from whom an offering circular containing the information specified in Part II of the offering statement may be obtained and in addition contains no more than the following information may be published, distributed or broadcast at or after the commencement of the public offering to any person prior to sending or giving such person a copy of such circular:

* * * * *

(d) If the offering is not complete within nine months from the date of the offering circular (offering statement—Part II) a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular, except that in the case of offerings under stock purchase, savings, stock option or other similar plans for the benefit of employees, if the offering is not completed within 12 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an orginal offering circular. In no event shall an offering circular be used which is false or misleading in light of the circumstances then existing.

(e) If the original offering circular (offering statement—Part II) is revised or amended, such revised or amended circular shall be filed as an amendment to the offering statement, as provided by § 230.255(d), with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

(f) Sales by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction) of securities of an issuer not subject, immediately prior to the time of filing an offering statement, to the provisions of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, offered pursuant to this regulation and taking place prior to the expiration of ninety days after the first date upon which the securities were bona fide offered to the public, shall not be exempt pursuant to this regulation unless: (1) the dealer furnishes a copy of the then current offering circular (offering statement—Part II) to the purchaser prior to or with the purchaser's receipt of the confirmation of the sale; or (2) the offering circular has previously been mailed or delivered to such purchaser. Failure by a dealer to comply with the provision of this

subparagraph shall not otherwise affect the availability of the exemption for any other person, including the aggregate amount of securities exempted pursuant to Rule 254.

(g) The issuer or, if there is an underwriter, the underwriter shall provide reasonable quantities of copies of the offering circular (offering statement—Part II) to any dealer on request prior to the expiration of ninety days after the first date upon which securities of such issuer were bona fide offered to the public pursuant to this regulation.

(h) An offering circular filed pursuant to paragraph (e) of this section may be distributed prior to the expiration of the 10-day waiting period for offerings provided for in § 230.255 (a) and (d) and paragraph (e) of this section and such distribution may be accompanied or following by oral offers related thereto, provided the conditions in paragraphs (1) through (4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of § 230.256: *Provided*, That if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or an offering circular of the type referred to in paragraph (4) of this section shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commission, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. For issuers not subject to the reporting provisions under section 13(a) or 15(d) of the Securities Exchange Act of 1934, the disclosure on the outside front cover page of the Preliminary Offering Circular should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or should include a bona fide estimate of the principal amount of debt securities to be offered.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular:

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales 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.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities which is to be sold by or through one or more underwriters who are broker-dealers registered under section 15 of the Securities Exchange Act of 1934, each of whom has furnished a signed Consent and Certification in the form prescribed as a condition to the use of such offering circular;

(4) An offering circular which contains all of the information specified in Part II of the offering statement and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

6. Section 230.257 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 230.257 Offerings not in excess of $100,000.

Except as to issues specified in paragraph (a) of § 230.253 and issues of assessable stock, the offering circular (offering statement—Part II) need not be filed or used in connection with an offering of securities under this regulation if the aggregate offering price of all securities of the issuer, its predecessors and affiliates offered or sold without the use of such an offering circular does not exceed $100,000, computed in accordance with § 230.254, provided the following conditions are met:

(a) In addition to filing Part I—Notification and Part III—Exhibits, there shall be filed as an exhibit five copies of a statement setting forth the information (other than financial statements) required by Part II—Offering Circular of the offering statement.

* * * * *

7. Section 230.258 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 230.258 Sales material to be filed.

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer, and of its affiliates or any principal underwriter for use in connection with the offering of any securities under §§ 230.251 to 230.265 shall be filed, with the office of the Commission with which the offering statement is filed, at least five days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

* * * * *

(c) every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than ten persons, except an offering circular (offering statement—Part II) filed pursuant to § 230.256(e).

8. Section 230.259 is revised to read as follows:

§ 230.259 Statement required in all offering circulars.

There shall be set forth on the cover page of every offering circular the following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

"THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION."

9. Section 230.260 is revised to read as follows:

§ 230.260 Reports of sales hereunder.

Within 30 days after the end of each six-month period following the date of

the original offering circular (offering statement—Part II) required by § 230.256, or of the statement required by § 230.257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the offering statement was filed four copies of a report on Form 2–A containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the six-month period in which the last sale is made.

10. Section 230.261 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(2), (a)(4), (b), and (d) to read as follows:

§ 230.26 Suspension of exemption.

(a) The Commission may, at any time after the filing of an offering statement, enter an order temporarily suspending the exemption, if it has reason to believe that * * *

(2) The offering statement or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

* * * * *

(4) Any event has occurred after the filing of the offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

* * * * *

(b) Upon the entry of an order under paragraph (a) of this section the Commission will promptly give notice to the persons on whose behalf the offering statement was filed (1) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (2) that the Commission, upon receipt of a written request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of an opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

* * * * *

(d) All notices required by this rule shall be given to the person or persons on whose behalf the offering statement was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the offering statement.

11. Section 230.262 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 230.262 Consent to service of process.

(a) If the issuer, any of its directors or officers, any person for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each such non-resident person shall, at the time of filing the offering statement required by § 230.255, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which—

* * * * *

12. Section 230.263 is revised to read as follows:

§ 230.263 Notice of delayed or suspended offering and sale.

If within three business days after the issuer had received notice that the Commission has no further comments with respect to the offering statement a bona fide effort is not made to proceed with the offering and sale of the securities proposed to be offered under this regulation, or if the offering or sale of such securities is suspended by the issuer or any underwriter within 15 days after the issuer has received such notice, a notice of the delay or suspension, stating the reasons therefor, shall be filed by the issuer or underwriter with the Regional Office of the Commission with which the offering statement was filed, unless such information is set forth in the offering statement. Such notice shall be sent promptly by telegraph or air mail and if sent by telegraph shall be confirmed in writing within a reasonable time by the filing of a signed copy of the notice.

13. Section 230.264 is revised to read as follows:

§ 230.264 Procedure with respect to abandoned offering statement.

When an offering statement under §§ 230.251 to 230.265, or the latest substantive amendment thereto, if any, has been on file with the Commission for a period of nine months from its filing date and the offering has not commenced, the Commission may, in its discretion, proceed in the following manner to determine whether such filing has been abandoned by the issuer.

(a) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of §§ 230.251 to 230.265 or be withdrawn within thirty days after the date of such notice.

(b) If the issuer or issuer's counsel fails to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within thirty days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the offering statement abandoned.

(c) When such an order is entered by the Commission, the papers comprising the offering statement and any amendment thereto will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated ———."

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. Section 239.90 is revised to read as follows:

§ 239.90 Form 1–A, offering statement under Regulation A.

This form shall be used for filing of a notification under § 230.255 of Regulation A (§§ 230.251–230.264 of this chapter).

2. Section 239.96 is added to read as follows:

§ 239.96 Form 7A, optional form of escrow for securities that are subject to the provisions of Rule 253(c) of Regulation A (§ 230.253(c) of this chapter).

This form is an optional form of escrow for securities that are subject to the provisions of Rule 253(c) of Regulation A (§ 230.253(c) of this chapter).

Note.—Copies of Forms 1–A and 7–A are filed as part of the original document. Copies of the forms may be obtained upon request from the Office of Small Business Policy, Division of Corporation Finance, U.S. Securites and Exchange Commission, 500

North Capitol Street, Washington, D.C. 20549, (202) 272-2644.

[FR Doc. 81-24029 Filed 8-17-81; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 276

[Release No. IA-770]

Applicability of Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as an Integral Component of Other Financially Related Services

AGENCY: Securities and Exchange Commission.

ACTION: Statement of staff interpretive position.

SUMMARY: The Commission is publishing the views of the staff of the Division of Investment Management as to the applicability of the Investment Advisers Act of 1940 to financial planners, pension consultants, and other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation. The purpose of this release is to call to the attention of persons providing such services, as well as members of the general public who may utilize such services, the circumstances under which persons providing these services would be investment advisers under the Advisers Act and subject to the Act's registration, antifraud and other provisions. The guidance provided in this release should assist providers of financial advisory services in complying with the Advisers Act and reduce the number of requests for staff interpretive or no-action advice with respect to the applicability of the Advisers Act to such persons where the requests do not present any novel or interpretive issues. With one exception the interpretive views set forth in the release are based on positions consistently taken by the staff in the past. In the case of the one exception, the position articulated in the release may have the effect of excepting from the definition of investment adviser certain persons the staff would not regard as being in the business of providing investment advice.

FOR FURTHER INFORMATION CONTACT: Mary S. Champagne, Esq., Investment Advisers Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2041.

SUPPLEMENTARY INFORMATION: The Staff of the Commission has received numerous requests for staff interpretive or no-action advice concerning the applicability of the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Advisers Act") to persons, such as financial planners, pension consultants, sports and entertainment representatives and others, who provide investment advisory services as an integral component of, or bundled with, other financially related services. In addition, it appears that many of these persons may not be aware of the provisions of the federal securities laws which may be applicable to their activities, particularly the fiduciary standards and registration requirements of the Advisers Act. It is the view of the staff that, for the reasons set forth below, many of the persons providing such services to the public are investment advisers under the definition of investment adviser contained in Section 202(a)(11) of the Advisers Act [15 U.S.C. 80b-2(a)(11)] and are not entitled to rely on any of the exceptions from that definition provided in clauses (A) to (F) of Section 202(a)(11). An investment adviser who uses the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser is subject to the registration, antifraud, and other provisions of the Advisers Act, unless the adviser is excepted from registration under Section 203(b) of the Advisers Act [15 U.S.C. 80b-3(b)]. An adviser excepted from registration under the Advisers Act remains subject to its antifraud provisions.

I. Background

Financial planning typically involves the provision of a variety of services, principally advisory in nature, to individuals or families with respect to management of financial resources based upon an analysis of individual client needs. Generally, financial planning services involve the preparation of a financial program for a client based upon information elicited from the client as to the client's financial circumstances and objectives. Such information normally would cover present and anticipated assets and liabilities, including insurance, savings, investments, and anticipated retirement or other benefits. The program developed for the client typically includes general recommendations for a course of activity, or specific actions, to be taken by the client. For example, recommendations may be made that the client obtain insurance or revise existing coverage, establish an individual retirement account, increase or decrease funds held in savings accounts, or invest funds in securities. A financial planner may develop tax or estate plans for the client or may refer the client to an accountant or attorney for these services. The provider of such financial planning services typically assists the client in implementing the recommended program by, among other things, making specific recommendations to carry out the general recommendations of the program, or by selling to the client insurance products, securities, or other investments. The financial planner may also review the client's program periodically and recommend revisions. Persons providing such financial planning services use various compensation arrangements. Some financial planners charge clients an overall fee for the development of an individual client program while others charge clients an hourly fee. In some instances financial planners are compensated, in whole or in part, through the receipt of sales commissions upon the sale to the client of insurance products, mutual fund shares, interests in real estate, or other investments.

A second common form of service relating to financial matters is that provided by "pension consultants" who typically offer, in addition to administrative services, a variety of advisory services to employee benefit plans and their fiduciaries based upon an analysis of the needs of the individual plan. Such advisory services may include advice as to the types of funding media available to provide plan benefits, general recommendations as to what portion of plan assets should be invested in various investment media, including securities, and, in some cases, recommendations regarding investment in specific securities or other investments. Pension consultants may also assist plan fiduciaries in determining plan investment objectives and policies and in designing funding media for the plan. They may also provide general or specific advice to plan fiduciaries as to the selection or retention of persons to manage the assets of the plan.[1] Persons providing such services to plans are customarily compensated for the provision of their services through the receipt of fees paid by the plan, its sponsor, or other

[1] The authority to manage all or a portion of a plan's assets often is delegated to a person who qualifies as an "investment manager" under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*]. Under that statute, which is applicable to private sector pension and welfare benefit plans, an "investment manager" must be a registered investment adviser under the Advisers Act, a bank as defined in the Advisers Act, or an insurance company which is qualified to perform services as an investment manager under the laws of more than one state.

persons; by means of sales commissions on the sale of insurance products or investments to the plan; or through a combination of fees and commissions.

Another form of financial advisory service is that provided by persons offering a variety of financially related services to entertainers or athletes based upon the needs of the individual client. Such persons, who often use the designation "sports representative" or "entertainment representative," typically offer a number of services to clients, including the negotiation of employment contracts and development of promotional opportunities for the client, as well as advisory services related to investments, tax planning, or budget and money management. Some persons providing these services to clients may assume discretion over all or a portion of a client's funds by collecting income, paying bills and making investments for the client. Sports or entertainment representatives are customarily compensated for the provision of their services primarily through fees charged for negotiation of employment contracts but may also receive compensation in the form of fixed charges or hourly fees for other services, including investment advisory services, which they provide.

There are other persons who, while not falling precisely into one of the foregoing categories, provide financial advisory services. As discussed below, financial planners, pension consultants, sports or entertainment representatives, or other persons providing financial advisory services, may be investment advisers within the meaning of the Advisers Act.

II. Status as an Investment Adviser

A. Definition of Investment Adviser

Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean:

> * * * any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. * * *

Whether a person providing financially related services of the type discussed in this release would be an investment adviser within the meaning of the Advisers Act would depend upon all the relevant facts and circumstances. As a general matter, however, if the activities of any person providing such integrated advisory services satisfy each element of either part of the foregoing two part definition, such person would be an investment adviser within the meaning of the Advisers Act, unless entitled to rely on one of the exceptions from the definition of investment adviser in clauses (A) to (F) of Section 202(a)(11).[2] Accordingly, a determination as to whether a person providing financial planning, pension consulting, or other integrated advisory services is an investment adviser will depend upon whether such person: (1) provides advice, or issues reports or analyses, regarding securities; (2) whether he is in the business of providing such services; and (3) whether he provides such services for compensation. These three elements are discussed below.

1. *Advice or analyses concerning securities.* It would seem apparent that a person who gives advice or makes recommendations or issues reports or analyses with respect to specific securities is an investment adviser under Section 202(a)(11), assuming the other elements of the definition of investment adviser are met, i.e., that such services are performed as part of a business and for compensation. However, it has been asked on a number of occasions whether advice, recommendations or reports that do not pertain to specific securities satisfy this element of the definition. In the view of the staff, a person who provides advice, or issues or promulgates reports or analyses, which concern securities, but which do not relate to specific securities, would generally be an investment adviser under Section 202(a)(11), assuming such services are performed as part of a business [3] and for compensation. The staff has interpreted the definition of investment adviser to include persons who advise clients either directly or through publications or writings concerning the relative advantages and disadvantages of investing in securities in general as compared to other investment media.[4] A person who, in the course of developing a financial program for a client, advises a client as to the desirability of investing in securities as opposed to, or in relation to, stamps, coins, direct ownership of commodities, or any other investment vehicle would also be "advising" others within the meaning of Section 202(a)(11).[5] Similarly, a person who advises employee benefit plans on funding plan benefits by investing in securities, as opposed to, or in addition to, insurance products, real estate or other funding media, would be "advising" others within the meaning of Section 202(a)(11). A person providing advice to a client as to the selection or retention of an investment manager or managers also would, under certain circumstances, be deemed to be "advising" others within the meaning of Section 202(a)(11).[6]

2. *The "business" standard.* In order to come within the defintion of an investment adviser, a person must engage for compensation in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or issue or promulgate reports or analyses concerning securities as part of a regular business. Under this definition, the giving of advice or issuing of reports or analyses concerning securities for compensation need not constitute the principal business activity or any particular portion of the business activities of a person in order for the person to be an investment adviser under Section 202(a)(11). However, a person who provides investment advice for compensation but is not *in the business* of advising others as to the value of securities or the advisability of investing in securities, or does not issue reports or analyses concerning securities as part of *a regular business*, does not come within the Advisers Act's definition of an investment adviser.

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[2] See discussion of Section 202(a)(11) (A) to (F) in Section II B, *infra*.

[3] In this regard, as discussed in detail below, it is the staff's view that a person who gives advice or prepares analyses concerning securities generally may, nevertheless, not be "in the business" of doing so and, therefore, will not be considered an "investment adviser" as that term is used in Section 202(a)(11).

[4] *See, e.g.* Richard K. May (avail. Dec. 11, 1979); Hayes Martin (avail. Feb. 15, 1980); Pauline Wang (avail. Mar. 21, 1980).

[5] *See, e.g.* Thomas Beard (avail. May 8, 1975); Sinclair-deMarinis Inc. (avail. May 1, 1981).

[6] *See, e.g.*, FPC Securities Corp. (avail. Dec. 1, 1974) (program to assist client in selection and retention of investment manager by, among other things, recommending investment managers to clients, monitoring and evaluating the performance of a client's investment manager, and advising client as to the retention of such manager); William Bye Co. (avail. Apr. 26, 1973) (program involving recommendations to client as to selection and retention of investment manager based upon client's investment objectives and periodic monitoring and evaluation of investment manager's performance). On occasion in the past the staff has taken no-action positions with respect to certain situations involving persons providing advice to clients as to the selection or retention of investment managers. *See, e.g.*, Sebastian Associates, Ltd., (avail. Aug. 7, 1975) (provision of assistance to clients in obtaining and coordinating the services of various professionals such as tax attorneys and investment advisers, including referring clients to such professionals, in connection with business as agent for clients with respect to negotiation of employment and promotional contracts); Hudson Valley Planning Inc. (avail. Feb. 25, 1978) (provision of names of several investment managers to client upon request, without recommendation, in connection with business of providing administrative services to employee benefit plans).

Whether or not a person's activities constitute being engaged in the business of advising others as to the value of securities or the advisability of investing in securities or issuing reports or analyses concerning securities as part of a regular business will depend on (1) whether the investment advice being provided is solely incidental to a non-investment advisory, primary business of the person providing the advice; (2) the specificity of the advice being given; and (3) whether the provider of the advice is receiving, directly or indirectly, any special compensation therefor.[7] As a general matter, the staff would take the position that a person who provides financial services including investment advice for compensation is *in the business* of providing investment advice within the meaning of Section 202(a)(11) unless the advice being provided by such person is solely incidental to a non-investment advisory business of the person, is non-specific, and is not rewarded by special compensation for such investment advice.

If a person holds himself out as an investment adviser or as one who provides investment advice, he would be considered to be in the business of providing investment advice. However, a person whose principal business is providing financial services other than investment advice would not be regarded as being *in the business* of giving investment advice if, as part of his service, he merely discusses in general terms the advisability of investing in securities in the context of, for example, a discussion of economic matters or the role of investments in securities in a client's overall financial plan. The staff would, however, take the position that such a person is in the business of providing investment advice if, on anything other than rare and isolated instances, he discusses the advisability of investing in, or issues reports or analyses as to, specific securities or specific categories of securities (e.g., bonds, mutual funds, technology stocks, etc.).[8] In addition, a person who provides market timing services would be viewed as being in the business of giving investment advice. Finally, as previously indicated, a person will be regarded as being in the business of providing such advice if he receives any special compensation therefor or receives any direct or indirect remuneration in connection with a client's purchase or sale of securities. A person would generally not be considered to be receiving special compensation for the provision of advisory services if he makes no charge for the advisory portion of his services or if he charges an overall fee for financial advisory services of which the investment advice is an incidental part.

3. *Compensation.* The definition of investment adviser applies to persons who give investment advice and receive compensation therefor. This compensation element is satisfied by the receipt of any economic benefit, whether in the form of an advisory fee, some other fee relating to the total services rendered, commissions, or some combination of the foregoing. It is not necessary that a person who provides investment advisory and other services to a client charge a separate fee for the investment advisory portion of the total services. The compensation element would be satisfied if a single fee were charged for the provision of a number of different services, which services included the giving of investment advice or the issuing of reports or analyses concerning securities within the meaning of the Advisers Act.[9] As discussed above, however, the fact that no separate fee is charged for the investment advisory portion of the service could be relevant to whether the person is "in the business" of giving investment advice.

It is not necessary that an adviser's compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for his services.[10] Accordingly, a person providing a variety of services to a client, including investment advisory services, for which the person receives any economic benefit, for example, by receipt of a single fee or commissions upon the sale to the client of insurance products or investments, would be performing such advisory services "for compensation" within the meaning of Section 202(a)(11) of the Advisers Act.[11]

B. Exceptions From Definition of Investment Adviser

Clauses (A) to (E) of Section 202(a)(11) of the Advisers Act set forth limited exceptions from the definition of investment adviser available to certain persons.[12] Whether an exception from the definition of investment adviser is available to any financial planner, pension consultant, or other person, providing investment advisory services within the meaning of Section 202(a)(11), will depend upon the relevant facts and circumstances.

A person relying on an exception from the definition of investment adviser must meet all of the requirements of such exception. It is the view of the staff that the exception contained in Section 202(a)(11)(B) would not be available, for example, to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services. In such a case it would appear that the performance of investment advisory services by such person would be incidental to the practice of his financial planning or pension consulting profession and not incidental to his practice as a lawyer or accountant.[13] Similarly, the exception for brokers or dealers contained in Section 202(a)(11)(C) would not be available to a broker or dealer, or associated person of a broker or dealer, acting within the

[7] These criteria were developed as part of the staff's on-going review of prior staff interpretive letters and have not previously been articulated.

[8] *Compare, Zinn* v. *Parrish*, 644 F.2d 360 (7th Cir. 1981), CCH Sec. L. Rep. ¶97,920.

[9] *See, e.g.* FINESCO, (avail. Dec. 11, 1979).

[10] *See, e.g.* Warren H. Livingston (avail. Mar. 8, 1980).

[11] Section 202(a)(11)(C) of the Advisers Act excepts from the definition of investment adviser a broker or dealer who performs investment advisory services which are incidental to the conduct of its broker-dealer business and who receives no special compensation therefor. See discussion of Section 202(a)(11)(C) *infra*.

[12] Section 202(a)(11) provides that the definition of investment adviser does not include:

(A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company;

(B) any lawyer, accountant, engineer, or teacher whose performance of such [advisory] services is solely incidental to the practice of his profession;

(C) any broker or dealer whose performance of such [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor;

(D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation;

(E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall be designated by the Secretary of the Treasury, pursuant to Section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act. * * *

Section 202(a)(11)(F) excepts from the definition of investment adviser "such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order."

[13] *See, e.g.* Mortimer M. Lerner (avail. Feb. 15, 1980). The "professional" exception provided in Section 202(a)(11)(B) by its terms is only available to lawyers, accountants, engineers, and teachers. A person engaged in a profession other than one of thos enumerated in Section 202(a)(11)(B) who performs investment advisory services would be an investment adviser within the meaning of Section 202(a)(11) whether or not the performance of investment advisory services is incidental to the practice of such profession. Unless another basis for excepting such person from the definition of investment adviser is available, such person would be subject to the Advisers Act.

scope of its business as broker or dealer, if such person receives any special compensation for the provision of investment advisory services.[14] Moreover, the exception from the definition of investment adviser contained in Section 202(a)(11)(C) would not be available to an associated person of a broker-dealer or "registered representative" who provides investment advisory services to clients outside of the scope of such person's employment with the broker-dealer.[15]

III. Registration as an Investment Adviser

Any person who is an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act, who is not expected from the definition of investment adviser by virtue of one of the exceptions in Section 202(a)(11) (A) to (F), and who makes use of the mails or any instrumentality of interstate commerce in connection with such person's business as an investment adviser, is required by Section 203(a) of the Advisers Act to register with the Commission as an investment adviser unless specifically excepted from registration by Section 203(b) of the Advisers Act.[16] The materials necessary for registering with the Commission as an investment adviser can be obtained by writing Publications Unit, Securities and Exchange Commission, Washington, D.C. 20549.

IV. Application of Antifraud Provisions

The antifraud provisions of Section 206 of the Advisers Act [15 U.S.C. 80b–6], and the rules adopted by the Commission thereunder, apply to any person who is an investment adviser as defined in the Advisers Act, whether or not such person is required to be registered with the Commission as an investment adviser. Sections 206 (1) and (2) make it unlawful for an investment adviser, directly or indirectly, to "employ any device, scheme, or artifice to defraud any client or prospective client" or to "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."[17] An investment adviser is a fiduciary who owes his clients "an affirmative duty of 'utmost good faith, and full and fair' disclosure of all material facts."[18] The Supreme Court has stated that a "[f]ailure to disclose material facts must be deemed fraud or deceit within its intended meaning, for, as the experience of the 1920's and 1930's amply reveals, the darkness and ignorance of commercial secrecy are the conditions under which predatory practices best thrive."[19] Accordingly, the duty of an investment adviser to refrain from fraudulent conduct includes an obligation to disclose material facts to his clients whenever the failure to do so would defraud or operate as a fraud or deceit upon any client or prospective client. In this connection the adviser's duty to disclose material facts is particularly pertinent whenever the adviser is in a situation involving a conflict, or potential conflict, of interest with a client.

The type of disclosure required by an investment adviser who has a potential conflict of interest with a client will depend upon all the facts and circumstances. As a general matter, an adviser must disclose to clients all material facts regarding the potential conflict of interest so that the client can make an informed decision as to whether to enter into or continue an advisory relationship with the adviser or whether to take some action to protect himself against the specific conflict of interest involved. The following examples, which have been selected from cases and staff interpretive and no-action letters, illustrate the scope of the duty to disclose material information to clients in certain common situations involving conflicts of interests.

An investment adviser who is also a registered representative of a broker-dealer and provides investment advisory services outside the scope of his employment with the broker-dealer must disclose to his advisory clients that his advisory activities are independent from his employment with the broker-dealer.[20] Additional disclosures would be required, depending on the circumstances, if the investment adviser recommends that his clients execute securities transactions through the broker-dealer with which the investment adviser is associated. For example, the investment adviser would be required to disclose fully the nature and extent of any interest the investment adviser has in such recommendation, including any compensation the investment adviser would receive from his employer in connection with the transaction.[21] In addition, the investment adviser would be required to inform his clients of their ability to execute recommended transactions through other broker-dealers.[22] Finally, the Commission has stated that "an investment adviser must not effect transactions in which he has a personal interest in a manner that could result in preferring his own interest to that of his advisory clients."[23]

An investment adviser who structures his personal securities transactions to trade on the market impact caused by his recommendations to clients must disclose this practice to clients.[24] An investment adviser generally also must disclose if his personal securities transactions are inconsistent with the advice given to clients.[25] Finally, an investment adviser must disclose compensation received from the issuer of a security being recommended.[26]

Unlike other general antifraud provisions in the Federal securities laws which apply to conduct "in the offer or sale of any securities"[27] or "in connection with the purchase or sale of any security,"[28] the pertinent provisions

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[14] *See, e.g.* FINESCO, *supra*. For a general statement of the views of the staff regarding special compensation under Section 202(a)(11)(C), see Investment Advisers Act Release No. 640 (October 5, 1978).

[15] *See, e.g.* George E. Bates (avail. Apr. 20, 1979).

[16] Section 203(b) excepts from registration:

(1) any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies; or

(3) any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the [Investment Company Act]. * * *

[17] In addition, Section 206(3) of the Advisers Act generally makes it unlawful for an investment adviser acting as principal for his own account knowingly to sell any security to or purchase any security from a client, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The responsibilities of an investment adviser dealing with a client as principal or as agent for another person are discussed in Advisers Act Release Nos. 40 and 470 (February 5, 1945 and August 20, 1975 respectively).

[18] *SEC* v. *Capital Gains Research Bureau*, 375 U.S. 180, 194 (1963) quoting Prosser, Law of Torts (1955), 534–535.

[19] *Id.*, at 200.

[20] David P. Atkinson (avail. Aug. 1, 1977).

[21] *Ibid.*

[22] Don P. Matheson (avail. Sept. 1, 1976).

[23] Kidder, Peabody & Co., Inc., 43 S.E.C. 911, 916 (1968).

[24] *SEC* v. *Capital Gains Research Bureau*, *supra* at 197.

[25] *In the Matter of Dow Theory Letters et al.*, Advisers Act Release No. 571 (February 22, 1977).

[26] *In the Matter of Investment Controlled Research et al.*, Advisers Act Release No. 701 (September 17, 1979).

[27] Section 17(a) [15 U.S.C. 77q(a)] of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

[28] Rule 10b-5 [17 CFR 240.10b-5] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et

Continued

of Section 206 do not refer to dealings in securities but are stated in terms of the effect or potential effect of prohibited conduct on the client. Specifically, Section 206 (1) prohibits "any device, scheme, or artifice to defraud any client or prospective client," and Section 206(2) prohibits "any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." In this regard, the Commission has applied Sections 206 (1) and (2) in circumstances in which the fraudulent conduct arose out of the investment advisory relationship between an investment adviser and its clients, even though the conduct did not involve a securities transaction. For example, in an administrative proceeding brought by the Commission against an investment adviser, the respondent consented to a finding by the Commission that the respondent had violated Sections 206(1) and (2) by persuading its clients to guarantee its bank loans and ultimately to post their securities as collateral for its loans without disclosing the adviser's deteriorating financial condition, negative net worth, and other outstanding loans.[29] Moreover, the staff has taken the position that an investment adviser who sells non-securities investments to clients must, under Sections 206 (1) and (2), disclose to clients and prospective clients all its interests in the sale to them of such non-securities investments.[30]

V. Need for Interpretive Advice

The general interpretive guidance provided in this release should facilitate greater compliance with the Advisers Act. The staff will respond to routine requests for no-action or interpretive advice relating to the status of persons engaged in the types of businesses described in this release by referring persons making such requests to the release, unless the requests present novel factual or interpretive issues such as material departures from the nature and type of services and compensation arrangements discussed above. Requests for no-action or interpretive advice from the staff should be submitted in accordance with the procedures set forth in Investment Advisers Act Release No. 281 (Jan. 25, 1971).

seq.] *See also* Section 15(c) [15 U.S.C. 78o(c)] of the Securities Exchange Act of 1934.

[29] *In the Matter of Ronald B. Donati Inc. et al.*, Advisers Act Rel. Nos. 666 and 683 (February 8, 1979 and July 2, 1979 respectively). *See also Intersearch Technology, Inc.* CCH Fed. Sec. L. Rep. 1974–1975 Trans. Binder ¶ 80,139 (Feb. 28, 1979) at 85,189.

[30] *See, Boston Advisory Group* (avail. Dec. 5, 1976).

PART 276—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Accordingly, Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA–770, Statement of the staff as to the applicability of the Investment Advisers Act to financial planners, pension consultants, and other persons who provide investment advisory services as an integral component of other financially related services, thereto.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

August 13, 1981.

[FR Doc. 81-24073 Filed 8-17-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. 80–18]

Limitations on Imports of Narcotic Raw Materials

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This rule amends § 1312.13 of Title 21, Code of Federal Regulations relating to the issuance of import permits for narcotic raw materials. Importation of approved narcotic raw materials (opium, poppy straw and concentrate of poppy straw) into the United States shall be permitted only from Turkey, India, Yugoslavia, France, Poland, Hungary and Australia. At least 80% of the narcotic raw material imported into the United States each year shall have as its original source Turkey or India. Except under conditions of insufficient supplies of narcotic raw materials, not more than 20% of the narcotic raw materials imported into the United States annually shall originate in Yugoslavia, France, Poland, Hungary or Australia.

DATES: This rule is effective September 17, 1981.

FOR FURTHER INFORMATION CONTACT: Gene R. Haislip, Director, Office of Compliance and Regulatory Affairs, Telephone: 202–633–1172.

SUPPLEMENTARY INFORMATION: On June 12, 1979, in response to United Nations Commission on Narcotic Drugs Resolution 471, the Administrator of the Drug Enforcement Administration (DEA) published an Advanced Notice of Proposed Rulemaking (ANPR) in which he set forth a proposal to limit United States imports of narcotic raw materials to such materials having their origins in certain supply countries which produced and exported *Papaver somniferum* gum opium during the ten year period immediately prior to January 1, 1961, and which have instituted and maintained adequate control systems for narcotic raw materials as required under the Single Convention. (See 44 FR 33695 (1979)). After consideration of the comments received in response to the ANPR, a Notice of Proposed Rulemaking was published on February 12, 1980 (45 FR 92289). The Notice of Proposed Rulemaking resulted in the receipt of numerous comments, pro and con, as well as several requests for a hearing.

Accordingly, by letter dated June 27, 1980, then-Administrator Peter B. Bensinger requested Administrative Law Judge Francis L. Young to conduct a hearing with respect to the proposed rulemaking in order that all interested parties might have the fullest opportunity to make their views known and to have their positions considered. The letter also specifically requested the Administrative Law Judge to include in his report to the Administrator, recommended findings and conclusions with respect to the following questions:

1. Whether the United States, consistent with its international obligations in general, and with CND Resolution 471 in particular, can require that a fixed portion of the narcotic raw materials it imports be derived from opium grown by the "traditional" producing countries, while permitting the remainder of its needs to be imported from other "non-traditional" sources; and, if so,

2. What ratio of traditional source to non-traditional source importation should be permitted?

Pursuant to a notice published in the **Federal Register** on July 24, 1980 (45 FR 49295), the hearing in this matter was conducted on September 9 and 10, 1980. Representatives of several countries, domestic and foreign commercial interests, and U.S. governmental agencies participated, presenting their views orally and in written presentations. On January 16, 1981, Judge Young submitted his report in this matter to the Administrator. Judge Young concluded *inter alia*, that regulatory amendments limiting the importation of narcotic raw materials could be lawfully promulgated; that the Administrator could lawfully require

that a major portion of the narcotic raw materials imported into the United States be produced by Turkey and India while permitting the remainder of U.S. needs to be imported from other countries which maintain adequate controls; that such an allocation would be in harmony with U.S. international trade agreements and would not be inconsistent with Resolutions 471 and 497; and that DEA staff personnel should determine an allocation ratio based upon world market shares existing during a recent representative period.

The Acting Administrator has considered the record of these proceedings and, after adopting the recommended findings and conclusions of the Administrative Law Judge, has decided to modify the proposed regulation in the following manner and based upon the following considerations.

An allocation ratio has been determined requiring the major portion of the narcotic raw materials imported into the United States to originate in Turkey or India with the remainder coming from Yugoslavia, France, Poland, Hungary and Australia. In determining the percentage allocated to Turkey and India, factors over and above their shares of world exports of narcotic raw materials between 1975 and 1979 were considered.

Turkey and India have been the principal sources of the narcotic raw materials imported into the United States and as our traditional trading partners for those commodities have been reliable sources of supply. Both nations fully fall within the parameters of the Single Convention as nations allowed to produce narcotic raw materials for export.

Turkey in particular has taken extraordinary measures to curtail the diversion of narcotic raw materials which formerly were the principal source of the heroin in the U.S. Furthermore, Turkey continues to actively cooperate with the U.S. in suppressing the illicit narcotic traffic which transits its borders.

However, in view of the past commercial relations with certain other countries as sources of narcotic raw material supply and the desirability of preserving alternate sources of narcotic raw materials, it is appropriate to allow certain specific countries to compete for the U.S. narcotic raw materials market on a limited basis. These countries, France, Poland, Hungary and Yugoslavia have provided the United States with supplies of narcotic raw materials during the period 1975 through 1979 and represent appropriate alternate sources. Australia is included as well since it was the source of material for which import permits had been requested during that period of time. In addition, we are presently persuaded that the nations mentioned above impose adequate controls over their production of narcotic raw materials in adherence to their obligations under the Single Convention.

During the course of the hearing and related proceedings in this matter, a number of participants discussed their concerns about the future availability of thebaine due to increased world-wide reliance upon the concentrate of poppy straw process which limits the amount of thebaine available in the raw material imported by U.S. manufacturers. The Acting Administrator has considered this issue and has concluded that the concerns are well-founded. Accordingly, the Drug Enforcement Administration will give further consideration to currently existing policy with respect to narcotic raw materials including the possibility of limited domestic production of *Papaver bracteatum* to satisfy some portion of this country's narcotic raw material needs.

Because this regulation involves foreign policy issues, it is exempt from formal OMB review. However, informal discussions with OMB have taken place regarding this final rule.

The Administrator hereby certifies that this rulemaking action will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This regulation allocates portions of the total quantities of narcotic raw materials imported by U.S. manufacturers to certain countries or groupings of countries. This importation is done by a very small number of major pharmaceutical manufacturers. It is anticipated to have no adverse impact upon any segment of the domestic narcotic manufacturing and distribution chain.

Therefore, the Acting Administrator of the Drug Enforcement Administration under the authority vested in the Attorney General by section 1002 of the Controlled Substances Import and Export Act, 21 U.S.C. 952, and delegated to the Administrator of the Drug Enforcement Administration by section 0.100(b) of Title 28 of the Code of Federal Regulations, amends section 1312.13, Title 21 of the Code of Federal Regulations by adding the following paragraphs (d) and (e) to read as follows:

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

§ 1312.13 Issuance of import permit.

* * * * *

(d) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the Administrator shall permit, pursuant to 21 U.S.C. 952(a)(1) or (a)(2)(A), the importation of approved narcotic raw material (opium, poppy straw and concentrate of poppy straw) having as its source:

(1) Turkey,
(2) India,
(3) Yugoslavia,
(4) France,
(5) Poland,
(6) Hungary, and
(7) Australia.

(e) At least eighty (80) percent of the narcotic raw material imported into the United States shall have as its original source Turkey and India. Except under conditions of insufficient supplies of narcotic raw materials, not more than twenty (20) percent of the narcotic raw material imported into the United States annually shall have as its source Yugoslavia, France, Poland, Hungary and Australia.

Francis M. Mullen, Jr.,
Acting Administrator.
July 29, 1981.

[FR Doc. 81-24019 Filed 8-17-81; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 41

[Departmental Regulation 108.810]

Nonimmigrant Visas; Validity, Termination and Replacement

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: Section 41.122(c) is amended to provide that an indefinite validity visa stamped in a passport which has expired shall be valid for application for admission into the United States if the alien also presents a valid passport as required by section 212(a)(26) of the Immigration and Nationality Act and § 41.112. Currently, § 41.122 recognizes such a visa as valid under these circumstances only for the alien's first application for admission after the expiration of the original passport.

EFFECTIVE DATE: August, 18, 1981.

FOR FURTHER INFORMATION CONTACT: Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, (202) 632-1900.

SUPPLEMENTARY INFORMATION: Consular officers abroad are authorized to issue indefinite validity visitor visas for unlimited applications for admission to the United States to nationals of certain countries which do not require visitor visas of U.S. nationals. However, an indefinite validity visa is not valid for entry into the United States if the passport in which it has been stamped has expired, even if the alien concurrently presents a valid passport, except for a single admission after the expiration of the original passport. Since the maximum passport validity in most countries is ten years or less, and since aliens rarely apply for a visa with a newly-issued, full-validity passport, in many cases the indefinite validity visa is usable only for a few years before the bearer must obtain a new passport and hence a new visa. In contrast, a nonimmigrant visa with a specified expiration date is valid until the stated expiration date for as many entries as are specified in the visa, even when the passport in which the visa was issued has expired, provided the alien also presents a valid passport at the port of entry.

It is desirable, for several reasons, to amend § 41.122(c) to recognize an indefinite validity visa stamped in an expired passport as valid without regard to the number of applications for admission after the expiration date of the original passport, provided the alien also concurrently presents a valid passport. This amendment will save personnel resources for consular offices abroad which issue indefinite validity visas by making it unnecessary to reissue such visas each time the alien obtains a new passport; it will eliminate the inconvenience to the alien of applying for a new visa each time a new passport is obtained; and it will bring the United States closer to true reciprocity with those countries which do not require visitor visas of U.S. nationals. It will also provide for application of the same criteria to indefinite validity visas as are now applied to other nonimmigrant visas with respect to the validity of the visa for entry into the United States when the passport in which it is stamped has expired.

Since the amendment contained in this order establishes uniformity in the application of certain visa validity criteria and removes an existing restriction, the provisions of the Administrative Procedure Act (5 U.S.C. 553) relative to Notice of Proposed Rulemaking do not apply in this instance.

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Accordingly in § 41.122 the fourth sentence of paragraph (c) is removed and the third sentence is revised to read:

§ 41.122 Validity, termination, and replacement of visas.

* * * * *

(c) * * * An indefinite validity visa shall be valid for application for admission into the United States if the passport in which the visa is stamped has expired, provided the alien is also in possession of a valid passport issued by the appropriate authorities of the country of which the alien is a national as required by section 212(a)(26) of the Act and § 41.112.

* * * * *

(Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; Section 109(b)(1), 91 Stat. 847)

Dated: July 22, 1981.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 81-24057 Filed 8-17-81; 8:45 am]

BILLING CODE 4710-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1889-3]

State of Maryland Approval of Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the Maryland State Implementation Plan which relates to visible emissions. The revision consists of a variance for the General Refractories Company of Baltimore, Maryland from the "no visible emissions" requirements of COMAR 10.18.04.02A for a period of three years while the Company continues to research further process changes to reduce or eliminate the visible emissions. During the variance period, visible emissions may not exceed 20% opacity.

EFFECTIVE DATE: September 17, 1981.

ADDRESSES: Copies of the SIP variance and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan

Maryland Air Management Administration, State of Maryland, O'Conor Office Building, 201 West Preston Street, Baltimore, MD 21203, Attn: George Ferreri

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vernon Butler, Air Media & Energy Branch (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone (215) 597-2711.

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 1980, the Administrator of the Air Management Administration for the State of Maryland submitted to EPA, Region III, a proposed variance from the Maryland State Implementation Plan. The proposed variance consists of a Secretarial Order for the General Refractories Company of Baltimore, Maryland. In his letter, the Administrator of the Maryland Air Management Administration certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR Part 51.4 and all relevant State procedural requirements. He asked that EPA consider the Secretarial Order as a revision of the State Implementation Plan. The order consists of a variance for a period of three (3) years starting September 2, 1980, from the State regulations which prohibit visible emissions (COMAR 10.18.-04.02A). During this period, visible emissions may not exceed 20% opacity.

Also during this three-year period, the company will continue to research further product and process changes in order to reduce or eliminate the visible emissions, and submit annual reports of the findings to Maryland. Then, if necessary, determinations will be made whether to extend the variance once the three-year period expires.

Since particulate emissions meet all applicable air quality regulations, and will not increase as a result of this revision, there is no need to revise these regulations.

The Regional Administrator invited comments in the notice published in the **Federal Register** on January 6, 1981, 46 Fed. Reg. 1315, and provided for a 30-day comment period ending February 6, 1981.

II. Control Strategy Demonstration

The company has demonstrated that it is meeting the particulate matter emission regulations which have been approved by EPA as a part of the Maryland SIP. This revision will not increase particulate matter emissions and therefore will not have an adverse impact on air quality.

III. Public Comments

All public comments received during the 30-day public comment period were in favor of approving the variance.

IV. EPA Evaluation

The revision submitted by the State of Maryland meets the criteria of Section 110(A)(1) of the Clean Air Act and 40 CFR Part 51.

V. Final Action

In view of this evaluation, the Administrator approves the above described variance as a revision to the Maryland State Implementation Plan.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 Fed. Reg. 8709 (January 27, 1981). This action constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7401–642)

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the **Federal Register** on July 1, 1980.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Subpart V—Maryland

1. Section 52.1070 is amended by adding paragraph (c)(48) as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(48) A revision submitted by the State of Maryland on 9/10/80 consisting of a variance issued to the General Refractories Company of Baltimore, Maryland exempting the Company from the "No Visible Emissions" requirements of COMAR 10.18.04.02A for a period of three (3) years commencing 9/2/80.

[FR Doc. 81-23734 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-3-FRL 1899-4]

Approval of Revision of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Pennsylvania State Implementation Plan (SIP) which incorporates alternative emission reduction plans (bubbles) for two facilities in Pennsylvania. These bubble plans allow a plant operator to employ a mixture of emission control measures, controlling more where costs are low, and less where costs are high, with overall emissions equivalent to previous regulations which were approved under the Clean Air Act. The State has requested that these plans be approved as part of the Pennsylvania SIP.

EFFECTIVE DATE: September 17, 1981.

ADDRESSES: Copies of the materials submitted by the Commonwealth of Pennsylvania and comments received on these materials may be examined during normal business hours at:

U.S. Environmental Protection Agency, Air Media and Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Sheridan;

Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett;

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Waterside Mall, Washington, D.C. 20460;

Office of the Federal Register, 1100 L Street, S.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Gregory D. Ham (3AH11), U.S. Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, PA 19106, telephone: 215/597–2745.

SUPPLEMENTARY INFORMATION:

I. Background

The Commonwealth of Pennsylvania has requested that the Environmental Protection Agency (EPA) approve alternative emission reduction plans (bubbles) for two faciliteis in Pennsylvania. On December 17, 1980, the Pennsylvania Department of Environmental Resources (DER) held a public hearing to allow public comment on the bubble plans. On December 31, 1980, and January 27, 1981, EPA proposed the approval of the bubble plans in the **Federal Register** for the Minnesota Mining and Manufacturing Company (3M) and Andre Greenhouses, Inc., respectively. On April 16, 1981, Secretary Clifford L. Jones of DER submitted the final regulations and supporting material for the two facilities.

The bubble plans for these sources were proposed concurrently by DER and EPA in order to expedite the approval process. Provided that there were no public comments negatively affecting the approvability of these plans, and that no substantive changes were made during the comment period, EPA would then be able to approve these bubble plans.

In a **Federal Reigster** notice of December 31, 1980, (45 FR 86506), EPA proposed the approval of a bubble plan for 3M, and invited public comment on this plan. The following paragraphs describe the facility and the bubble plan for 3M.

The 3M facility has 10 paper coating machines that produce pressure

sensitive tapes using solvent and water based coatings. The commonwealth has adopted regulations requiring a 74% reduction of potential VOC emissions from these coaters by a compliance date of April 9, 1982. This bubble will result in achievement of limitations of VOC emissions equivalent to DER's existing surface coating regulations while still allowing the use of high solvent coatings. This would be accomplished by the replacement of one solvent-based coater with a coater using innovative, solventless technology. The significant reduction in emissions from this coater would offset the emissions from the other sources, which will be controlled to a lesser degree or not at all.

Therefore, this bubble will allow 3M to implement emission controls in the most cost effective manner. The Company estimates its savings in pollution control costs would be $3 million in capital expenditures and up to $1 to $2 million in annual operating and maintenance costs. Overall emissions will be equal to or less than those allowed under existing regulations which would require compliance by April 9, 1982. However, also included under these regulations is the provision that if a company requires additional time to develop and implement low solvent (VOC) technology, when the alternative is the installation of energy intensive incineration or vapor recovery systems to reduce VOC emissions, the DER can grant a company an extension for compliance with the regulations. 3M has requested such an extension in order to develop and implement the new low solvent technology. DER has approved such an extension until January 1, 1984, with several incremental reductions in the interim period. A federal delayed compliance order for 3M was not necessary because the SIP-approved attainment date for ozone in Pennsylvania is December 31, 1987.

The regulation developed to implement this plan is "Section 128.14, Minnesota Mining and Manufacturing Company, Bristol Pennsylvania" of the Pennsylvania Air Resources Regulations. Subsection (a) of this Section identifies the facility and the individual sources to which this plan applies. Subsection (b) prohibits VOC emissions from these sources in excess of the following:

Time period	Tons of VOC
April 10, 1982 to April 9, 1983	8500
April 9, 1983 through December 31, 1983	6300
January 1, 1984 through December 31, 1984	7000
January 1, 1985 through December 31, 1985	6500
After December 31, 1985, annually	5921

Subsection (c) prohibits emissions of VOC's from these sources in excess of the amounts below:

Time period	Pounds of VOC per gallon of coating (minus water)
April 10, 1983 to December 31, 1983 averaged over the entire period	3.20
After December 31, 1983 determined as a seven-day running average	2.92

Subsection (d) allows the use of a 15-day running average instead of the 7-day running average required under Subsection (c), only during periods when the solventless coater is shut down for preventative maintenance. These shutdowns are limited to no more than two discrete seven-day periods in any one calendar year. Subsection (e) relieves this facility from compliance with Section 129.52(b) of Pennsylvania's Air Resources Regulations when it is in compliance with this Section and any conditions contained in the operating permit for this facility. Subsection (f) causes the cancellation of Section 128.14 if any of the sources listed in Subsection (a) are permanently shut down.

In order for DER to determine compliance with these regulations, reporting and testing requirements have been developed as conditions in the operating permit. 3M must develop and implement a record keeping system, by process, for the ten coating processes. Emissions of VOC must be calculated using methods described in the Appendix to the permit for each of the limitations established in Section 128.14. After January 1, 1984, a record of all scheduled outages for preventative maintenance must be kept for the solventless coating process. All records required must be kept for two years, and must be available upon request by DER. In addition, test results of potential and actual emissions from all sources in Subsection 128.14(a) must be submitted to DER, and one coating line must be converted exclusively to water based technology, both by April 9, 1982. Finally, semi-annual reports are required which document the progress of reductions of VOC emissions from the ten surface coating processes.

In a **Federal Register** notice of January 27, 1981, (46 FR 8586), EPA proposed the approval of a bubble plan for Andre Greenhouses, Inc., and invited public comment on this plan. A description of the affected facilities and the bubble plan to be implemented follows.

The Andre facilities consist of three greenhouse complexes, each heated by 2 package boilers (ranging from 250 to 500 horespower). Two of these complexes, those in Southampton and Doylestown, Pa., are located in the outer zone of the Southeastern Pennsylvania Air Basin, and are restricted to 1% sulfur content in fuel oils, or 1.2 lbs. SO_2/million Btu heat input for sources burning other than fuel oils. The other, in Wyndmoor, Pa., is in the inner zone and is therefore limited to a sulfur content of 0.5% or 1.0 lbs. SO_2/million Btu heat input.

This bubble plan allows for the combustion of 2.5% sulfur fuel oil (#6) in one boiler at each facility. The other boiler at each facility would burn natural gas. The total emissions at each facility will not exceed previous emissions based on annual fuel usage data for the three previous consecutive years. In addition, the averaging provisions protect against violations of the short- and long-term SO_2 National Ambient Air Quality Standards. Therefore, the air quality in the area will not be adversely affected.

The regulations implementing this plan are Section 128.11, 128.12, and 128.13 of the Pennsylvania Air Resources Regulations for the Southampton, Doylestown, and Wyndmoor facilities, respectively. The Sections consist of five Subsections. Subsection (a) identifies the facility to which the Section applies. Subsection (b) prohibits the owner or operator of the facility from storing or using #6 fuel oil with a sulfur content in excess of 2.5 percent by weight. Subsection (c) prohibits the owner or operator from causing, suffering, or permitting the SO_2 emission rate from the facility at any time in excess of a weekly average of 1.0 lbs. SO_2 per million Btu heat input, and an hourly average maximum of 2.5 lbs. SO_2 per million Btu heat input for the Southampton and Doylestown facilities. The Wyndmoor facility (Section 128.13(c)) is limited to 0.5 and 2.5 lbs. SO_2 per million Btu heat input for the weekly and hourly maximum averages, respectively. Subsection (d) would cause the Section to become null and void if one or more of the combustion units are permanently shut down. Subsection (e) relieves the facility listed in Subsection (a) from the requirements of Section 123.22(e), (Sulfur Compound Emissions, Combustion Units, Southeast Pennsylvania Air Basin), provided that the facility is in compliance with this Section and the terms and conditions of the operating permit issued for this facility. In addition to standard permit conditions, the operating permits for the three greenhouse complexes require the monitoring of fuel oil deliveries to ensure a sulfur content of 2.5% or less, the maintaining of weekly records of

amounts of natural gas and fuel oil combusted, and the storage of these records for a minimum of two years.

II. Control Strategy Demonstration

Emissions from both of the bubble plans described in this notice will not increase as a result of this action. These bubble plans allow alternative control measures which cost less but result in emission levels equivalent to previous levels. Because these changes have no adverse impact on air quality, a modeling demonstration of attainment and maintenance of standards is not required.

III. Public Comments

No comments were received during the 30-day comment period on either bubble proposal.

IV. Policy Issues

There are no policy issues involved with this revision other than the basis for the Administrator's approval; i.e., whether the revision submitted by the Commonwealth of Pennsylvania meets the criteria of Section 110(a)(2) of the Clean Air Act and 40 CFR 51.4, Public hearings; § 51.5, Submittal of plans; preliminary review of plans; § 51.6, Revisions; and § 51.11, Legal authority.

V. EPA Evaluation

The revision submitted by the Commonwealth of Pennsylvania meets the criteria of Section 110(a)(2) of the Clean Air Act and 40 CFR 51.4, 51.6, and 51.11.

VI. Final Action

In view of this evaluation, the Administrator approves the above-described amendments to the Pennsylvania Air Resources Regulations, Chapter 128, Alternative Emission Reduction Limitations, as a revision to the Pennsylvania State Implementation Plan. The revision establishes source specific emission limitations for sources which apply for, and are approved for, bubble plans. These result in reduced costs for control with no increases in emissions.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This action constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27, certification. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Authority: 42 U.S.C. 7401–642.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Pennsylvania was approved by the Director of the Federal Register on July 1, 1980.

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart NN—Pennsylvania

1. Section 52.2020 is amended by adding paragraph (c)(35) as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(35) Amendments to the Pennsylvania Air Resources Regulations, consisting of the addition of regulations for alternative emission reduction limitations (Sections 128.11 through 128.13 for Andre Greenhouses, Inc., and Section 128.14 for the 3M Co.), submitted on April 16, 1981.

[FR Doc. 81-23888 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[Docket No. AH028VA; A-3-FRL 1897-7]

Approval and Promulgation of Implementation Plans Revision of the Commonwealth of Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a variance to the Commonwealth of Virginia State Implementation Plan (SIP). This revision was submitted to EPA on July 28, 1980 and consists of a variance to the particulate matter regulations (Part IV, Rule EX-4, Section 4.41(i)) for dryers 1FSD, 2FSD, and pre-dryer 3FSD at the Union Camp Corporation Particleboard Plant located in Franklin, Virginia. This revision was requested by the State and will allow Union Camp Corporation to be in violation of the Virginia SIP until proper pollution control devices can be installed.

EFFECTIVE DATE: September 17, 1981.

ADDRESSES: Copies of the amendment and associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, Attn.: Patricia Sheridan.

Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, VA 23219, Attn.: Mr. John M. Daniel, Jr.

Public Information Reference Unit, EPA Library, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Glen, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, Phone: (215) 597–8187.

SUPPLEMENTARY INFORMATION: On July 28, 1980, the Commonwealth of Virginia submitted a variance which it had issued to the Union Camp Corporation on June 2, 1980 and requested it be reviewed and processed as a revision to the Virginia SIP. In addition to the variance, the Commonwealth also submitted its technical and modeling analyses. The revision consists of a variance from Part IV, Rule EX-4, Section 4.41(i) and to Paragraphs 3 and 5 of the Permit issued on October 13, 1978 for dryers 1FSD, 2FSD, and pre-dryer 3FSD.

The Commonwealth has provided proof that, after adequate public notice, a public hearing was held with regard to this variance. The dates of the public notice and hearing as well as the hearing location are shown below:

Date of public notice	Date of public hearing	Location
April 22, 1980	May 22, 1980	Virginia Beach, VA.

EPA proposed this revision in the **Federal Register** on April 7, 1981. (46 FR 20696)

EPA EVALUATION: In accordance with Section 4.41(i) of the Virginia State Air Pollution Control Board (VSAPCB) Regulations for the Control and Abatement of Air Pollution, the particulate matter limitation for 1FSD is 27.9 lbs./hour and for 2FSD is 20.4 lbs./hour. The limitation for 3FSD, in accordance with the permit issued on October 13, 1978, is 18 lbs./hour. Therefore, the total allowable particulate emissions from the three dryers is 66.3 lbs./hour at rated capacity.

In October 1979, the new dryer (3FSD) began operation and the Company conducted stack tests to determine compliance with the permit conditions. The new dryer did not comply with the emission limitations set forth in the permit and, because a new raw material was being used, the Company decided to test 1FSD and 2FSD which had previously been shown as in compliance with Section 4.41(i). These dryers were also now in violation. While it appears that the raw material is the cause of the problem, it has not yet been proven. All tests were conducted under typical operating conditions (not rated capacity) and represented a cross-section of conditions encountered in the drying process. By using the "worst case" for each dryer, the total particulate (TSP) emissions of the three dryers were 87 lbs./hour and emissions from the individual dryers (stacks) were:

1 FSD	47 lbs./hour
2 FSD	30 lbs./hour
3 FSD	10 lbs./hour

The modeling analysis performed by the VSAPCB staff demonstrated that the above emission levels would not cause any violation of the primary 24-hour TSP standard and that the secondary 24-hour standard could be exceeded on company property only under certain wind and stability conditions. Such exceedances would be small, less than 15 $\mu g/m^3$, and would occur only in a small area of the Company property. Furthermore, the meterological conditions necessary to cause this worst case situation have not occurred in the past 12 years.

The control strategy demonstration and the variance, which was to expire on June 15, 1981, were proposed for approval in the **Federal Register** as a SIP revision providing the Commonwealth amended the variance to include emission limitations, the tested "worst case" emissions cited above, which will remain in effect for the length of the variance.

The Commonwealth of Virginia submitted a revised variance on April 16, 1981, which includes the requested emission limitations and an extension to the variance until December 15, 1981. The submission did not revise any other part of the variance or control strategy demonstration. The emission limitations are the "worst case" emissions used in the demonstration as cited above. These limitations are acceptable and are applicable for the duration of the variance. The additional time is to allow for equipment delivery and installation as determined by the study completed according to the original variance schedule.

PUBLIC COMMENTS: There were no comments received during the 30 day public comment period.

CONCLUSION: In view of the above evaluation, the Administrator approves the above described variance to Part IV, Rule EX-4, Section 4.41(i), of the Commonwealth of Virginia SIP, for dryers 1FSD, 2FSD, and pre-dryer 3FSD at Union Camp Corporation Particleboard Plant located in Franklin, Virginia. In conjunction with the Administrator's approval; 40 CFR, Section 52.2420 (Identification of Plan) of Subpart VV (Virginia) is revised to incorporate these amendments.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I certify that SIP approvals under Section 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This action constitutes a SIP approval under Sections 110 and 172 of the Clean Air Act. This action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(42 U.S.C. 7401-642)

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the **Federal Register** on July 1, 1980.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart VV—Virginia

1. Section 52.2420 is amended by adding paragraph (c)(42) as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(42) A variance issued to the Union Camp Corporation Particleboard Plant located at Franklin, Virginia exempting dryers 1FSD, 2FSD, and pre-dryer 3FSD from Part IV, Rule EX-4, Section 4.41(i) until December 15, 1981, submitted on July 28, 1980 and amended on April 16, 1981 by the Virginia Secretary of Commerce and Resources.

[FR Doc. 81-23891 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 62

[A-3-FRL 1896-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Regulations promulgated under the provisions of Section 111(d) of the Clean Air Act, as amended, requires States to submit plans to control emissions of "designated pollutants" from "designated facilities." If no "designated facility" exists within a State, that State is required to submit a letter (which is called a negative declaration) to EPA. The District of Columbia submitted negative declarations to the EPA Region III office advising that there are no existing sulfuric acid production plants, existing kraft pulp mills or existing primary aluminum plants subject to the requirements of Subpart B of 40 CFR

Part 60 in the District, and the Commonwealths of Virginia and Pennsylvania have certified that there are no facilities which must be regulated under the guidelines for the control of fluoride emissions from existing primary aluminum plants in their respective States. Therefore, EPA approves these negative declarations, and is publishing them as rules under Part 62 of the Code of Federal Regulations.

EFFECTIVE DATE: September 17, 1981.

ADDRESSES: Copies of the negative declarations and accompanying information are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, PA 19106, Attn.: Patricia Sheridan (3AH11)

Public Information Reference Unit, Library Systems Branch (PM-213), U.S. Environmental Protection Agency, Room 2922, 401 M St., S.W., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Joanne McKernan at the above-listed address for EPA Region III (telephone number—215/597-8182).

SUPPLEMENTARY INFORMATION: Pursuant to Section 111(d) of the Clean Air Act, as amended, EPA promulgated regulations at 40 CFR Part 60, which require States to submit plans to control emissions of "designated pollutants" from "designated facilities." EPA is responsible for designating the facilities and pollutants for which States must develop plans. The pollutants which have been designated for control under Section 111(d) are *not* those for which ambient air quality standards have been established under Section 108 of the Act (referred to as "criteria" pollutants) nor are they listed as hazardous pollutants under Section 112. Section 111(d) requires control of certain pollutants at existing sources whenever standards of performance have been established under Section 111(b) for those pollutants from new sources of the same type.

EPA's actions in determining approval, disapproval, and promulgation of State plans must be made public. Final guideline documents specifying emission guidelines and time for compliance were published in September, 1977, for Control of Sulfuric Acid Mist Emissions (EPA-450/2-77-019); in August, 1979, for Control of Fluoride Emissions (EPA-450/2-78-049b); and in March, 1979, for Control of Total Reduced Sulfur (TRS) Emissions (EPA-450/2-78-003b). State plans were required by October 31, 1978 for the control of sulfuric acid mist from sulfuric acid production plants, by February 22, 1980 for the control of TRS emissions from existing kraft pulp mills, and by January 19, 1981 for the control of fluoride emissions from existing primary aluminum plants. In the event a State does not have a particular "designated facility" located in that State, a letter must be submitted indicating this to EPA. These letters are called "negative declarations." The District of Columbia submitted negative declarations to the EPA Region III office advising that there are no existing sulfuric acid production plants, no existing kraft pulp mills and no existing primary aluminum plants subject to the requirements of Subpart B of 40 CFR Part 60 in the District. Also, the Commonwealths of Virginia and Pennsylvania have certified that there are no facilities which must be regulated under the guidelines for the control of fluoride emissions from existing primary aluminum plants in their respective States.

By submitting negative declarations as stated above, Pennsylvania, Virginia and the District of Columbia have fulfilled their responsibility for submitting State plans for control of designated pollutants from existing facilities in the source categories specified as required by 40 CFR 60.23.

On April 1, 1981 (43 FR 19835), EPA proposed that these negative declarations be approved. During the public comment period, no comments were received. The Administrator has decided to approve these negative declarations under Subparts J, NN, and VV since the submittals meet the requirements of Section 111(d) of the Clean Air Act and 40 CFR Part 60, Subpart B, "Adoption and Submittal of State Plans for Designated Facilities."

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. Section 605(b) I certify that this SIP approval under Section 111 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities, because this action only approves State actions. It imposes no new requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Authority: 42 U.S.C. 7411(d).

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding Subpart J (§§ 62.2101-62.2129), Subpart NN (§§ 62.9601-62.9629), and Subpart VV (§§ 62.11601-62.11629) as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

* * * * *

Subpart J—District of Columbia

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

Sec.

62.2101 Identification of plan—negative declaration.

62.2102-62.2109 [Reserved]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

62.2110 Identification of plan—negative declaration.

62.2111-62.2119 [Reserved]

Fluoride Emissions From Existing Primary Aluminum Plants

62.2120 Identification of plan—negative declaration.

62.2121-62.2129 [Reserved]

* * * * *

Subpart NN—Pennsylvania

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

62.9601-62.9609 [Reserved—plan being processed]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

62.9810-62.9819 [Reserved—plan not submitted]

Fluoride Emissions From Existing Primary Aluminum Plants

62.9620 Identification of plan—negative declaration.

62.9621–62.9629 [Reserved]

* * * * *

Subpart VV—Virginia

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

62.11601–62.11609 [Reserved—plan being processed]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

62.11610–62.11619 [Reserved—plan not submitted]

Fluoride Emissions From Existing Primary Aluminum Plants

62.11620 Identification of plan—negative declaration.

62.11621–62.11629 [Reserved]

* * * * *

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Subpart J—District of Columbia

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.2101 Identification of plan—negative declaration.

The Director, Department of Environmental Services submitted on March 7, 1978 a letter certifying there are no existing sulfuric acid production units in the District subject to Part 60, Subpart B of this chapter.

§ 62.2102–§ 62.2109 [Reserved]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.2110 Identification of plan—negative declaration.

The Mayor of the District of Columbia submitted on July 16, 1980 a letter certifying there are no existing primary kraft pulp mills in the District subject to Part 60, Subpart B of this chapter.

§ 62.2111–§ 62.2119 [Reserved]

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.2120 Identification of plan—negative declaration.

The Mayor of the District of Columbia submitted on May 29, 1980 a letter certifying there are no existing primary aluminum plants in the District subject to Part 60, Subpart B of this chapter.

§ 62.2121–§ 62.2129 [Reserved]

* * * * *

Subpart NN—Pennsylvania

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.9601–§ 62.9609 [Reserved—plan being processed]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.9610–§ 62.9619 [Reserved—plan not submitted]

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.9620 Identification of plan—negative declaration.

The Secretary, Department of Environmental Resources submitted on November 3, 1980, a letter certifying there are no primary aluminum plants in the Commonwealth of Pennsylvania subject to Part 60, Subpart B of this chapter.

§ 62.9621–§ 62.9629 [Reserved]

* * * * *

Subpart VV—Virginia

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.11601–§ 62.11609 [Reserved—plan being processed]

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.11610–§ 62.11619 [Reserved—plan being submitted]

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.11620 Identification of plan—negative declaration.

The Commonwealth of Virginia, Office of the Governor, submitted on July 9, 1980, a letter certifying that there are no designated facilities in the Commonwealth subject to the emission guidelines set forth in the Final Guideline Document for the Control of Fluoride Emissions from Existing Primary Aluminum Plants.

§ 62.11621–§ 62.11629 [Reserved]

* * * * *

[FR Doc. 81-23889 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-1 FRL 1899-1]

Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Vermont's December 11, 1980 request to reclassify three counties from non-attainment for ozone to unclassified for two counties and to attainment for the third. The effect of these redesignations will be to allow Vermont to submit a revision to withdraw regulations controlling major sources of volatile organic compounds from the federally approved State Implementation Plan (SIP). This action results from 3 years of monitoring data. The data reflects no violation of national ambient air quality standards.

EFFECTIVE DATE: August 18, 1981.

FOR FURTHER INFORMATION CONTACT: Betsy Horne, Air Branch, EPA Region I, Room 1903, J. F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 223–5630.

ADDRESSES: Copies of the Vermont request and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; the Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC; and the Air & Solid Waste Programs, State Office Building, Montpelier, Vermont 05602.

SUPPLEMENTARY INFORMATION: On June 8, 1981 (46 FR 30368) EPA proposed to approve Vermont's request to redesignate three counties from non-attainment for ozone to: 1. attainment for Addison County and; 2. unclassified for Windsor and Chittenden Counties. The basis for the request and EPA's reasons for approving it were explained in the Notice of Proposed Rulemaking, cited above, and will not be repeated here. Once these redesignations are approved Vermont intends to submit a revision to remove regulations controlling major sources of volatile organic compounds from the federally approved SIP.

No public comments have been received on the Notice of Proposed Rulemaking and EPA is now taking final action to approve the request.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that attainment status redesignations under Section 107(d) of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. The attached rule constitutes an attainment status redesignation under § 107(d). This action imposes no regulatory requirements but only changes area air quality designations. Any regulatory

requirements which may become necessary as a result of this action will be dealt with in a separate action.

Under Executive Order 12291 EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation is not Major because it imposes no regulatory requirements but only changes air quality designations.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days to today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's Notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110(a) and Section 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a))

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AIR QUALITY CONTROL REGIONS

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 81.346 the attainment status designation table for ozone is revised to read as follows:

§ 81.346 Vermont.

* * * * *

Designated areas	Does not meet primary standards	Cannot be classified or better than national standards
AQCR 159 (Vermont portion):		
Addison County	X	
Chittenden County	X	
Rest of AQCR	X	
AQCR 221 (Vermont portion):		
Windsor County	X	
Rest of AQCR	X	

[FR Doc. 81-23997 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-8-FRL 1892-8]

Designation of Areas for Air Quality Planning Purposes; Utah Ozone Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice redesignates Weber and Utah Counties in Utah under Section 107 of the Clean Air Act from nonattainment to attainment for ozone. This action results from a request from the Governor of Utah which was received by EPA on February 3, 1981, and showed that the national standards for ozone have not been violated in either county since 1978. The intended effect of this regulation is that Weber and Utah Counties no longer need to meet the requirements of Part D of the Clean Air Act.

DATES: This action is effective August 18, 1981.

ADDRESSES: Copies of information relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: David S. Kircher, Chief, Utah, Montana, Wyoming Section, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3711.

SUPPLEMENTAL INFORMATION: On March 3, 1978 (43 FR 8964), EPA published nonattainment area designations for Utah which, *inter alia*, designated Weber and Utah Counties as nonattainment for ozone. These designations were based upon violations of the ozone standard (0.08 ppm) in Ogden and Provo, Utah.

On February 8, 1979 (44 FR 8202), EPA revised the ozone standard from 0.08 ppm to 0.12 ppm. Thus, under 40 CFR 50.9, an area is considered attainment when the expected number of days per year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one when averaged over the most recent three calendar years.

On February 3, 1981, EPA received from the State of Utah an analysis of the ozone concentrations in Ogden and Provo, Utah. That analysis concluded that both areas should be redesignated to attainment. EPA has examined the data independently and agrees with the State's conclusion that both areas are attainment with respect to the national standard for ozone. The actual expected exceedances at the two stations are shown in the following table:

City	County	Measured exceedances			Expected exceedances			
		1978	1979	1980	1978	1979	1980	Average
Ogden	Weber	3	0	0	3.1	0	0	1.0
Provo	Utah	1	0	1	1.6	0	1.2	0.9

On May 6, 1981 (46 FR 25325), EPA proposed to change the designations of Weber and Utah Counties to attainment and requested public comments. No comments were received. On the basis of its review, EPA is amending the ozone Section 107 designations for Weber and Utah Counties from nonattainment to attainment.

EPA finds good cause exists for making this action immediately effective because it only redesignates an area for planning purposes and removes a regulatory burden.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. Section 605(b)), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This action only redesignates areas for planning purposes and removes a regulatory burden.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings

brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not Major because it imposes no new requirements. It only redesignates areas for planning purposes and removes a regulatory burden. This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

This rulemaking is issued under the authority of Section 107 of the Clean Air Act (42 USC 7407).

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrotor.

Title 40, Part 81 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

§ 81.345 [Amended]

1. In Section 81.345, the table for ozone is revised by removing the reference to Weber and Utah Counties.

[FR Doc. 81-23998 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

Proposed Rules

Federal Register
Vol. 46, No. 159
Tuesday, August 18, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Financial Qualifications; Domestic Licensing of Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations concerning requirements for financial qualifications review and findings for electric utility applicants that are applying for permits or licenses for production or utilization facilities:

(1) To eliminate entirely these requirements for construction permit applicants; and either

(2)(i) To also eliminate entirely these requirements for operating license applicants; or

(2)(ii) To retain these requirements for operating license applicants to the extent they require submission of information concerning the costs of permanently shutting down the facility and maintaining it in a safe condition (i.e. decommissioning costs).

The Commission is also considering amending its regulations to require power reactor licensees to maintain the maximum amount of commercially available on-site property damage insurance, or an equivalent amount of protection (e.g., letter of credit, bond, or self insurance), from the time that the Commission first permits ownership, possession, and storage of special nuclear material at the site of the nuclear reactor.

DATES: Comment period expires October 19, 1981. Comments received after October 19, 1981, will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposal and/or the supporting value/impact analysis to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Single copies of the value/impact analysis may be obtained on request from Jim C. Petersen, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone: 301–492–9883). Copies of the value/impact analysis and of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jim C. Petersen, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301–492–9883).

SUPPLEMENTARY INFORMATION:

I. Background

A. *The Statute and the Proposed Rule.* Section 182a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2232a (the "Act"), provides in pertinent part:

> Each application for a license hereunder shall be in writing and shall specifically state *such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant*, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. . . . *The Commission may* at any time after the filing of the original application, and before the expiration of the license, *require further written statements* in order to enable the Commission to determine whether the application shall be granted or denied or whether a license should be modified or revoked. . . .

(emphasis added). In *New England Coalition on Nuclear Pollution* v. *NRC*, 582 F.2d 87 (1st Cir. 1978), *aff'g sub nom. Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–78–1, 7 NRC 1 (1978), the U.S. Court of Appeals for the First Circuit stated that the Act "gives the NRC complete discretion to decide what financial qualifications are appropriate." 582 F.2d at 93.

As will be discussed below, it is the NRC's present proposal, in exercising the discretion conferred by Section 182a, to eliminate current financial qualifications review and findings required by 10 CFR 50.33(f) and other sections of 10 CFR Part 50 as to electric utility applicants for construction permits and operating licenses for nuclear power plants, which are utilization facilities licensed pursuant to 10 CFR 50.21(b) and 50.22, or for production facilities licensed pursuant to 10 CFR Part 50. The one possible exception to this proposal may be that the Commission, in the alternative, will decide to retain at the operating license stage that portion of the financial qualifications review and findings that relate to the costs for permanent shutdown and maintenance of the facility in a safe condition (*i.e.* decommissioning costs). If the Commission decides to retain the financial qualifications requirements relating to decommissioning costs, the rule will serve as an interim rule until completion of a future rulemaking on decommissioning that will consider the costs of decommissioning and the necessary financial assurances. At that time, the Commission will, if necessary, again amend the financial qualifications regulations to make them consistent with the final decommissioning regulations adopted. The proposed rule also makes certain editorial modifications to § 50.33(f) to improve its clarity, makes conforming changes to § 50.40(b) and § 50.57(a)(4), and eliminates Appendix C to 10 CFR Part 50. In addition, a new provision discussed in III., D., below, would require power reactor licensees to maintain the maximum amount of commercially available on-site property damage insurance, or an equivalent amount of protection (e.g. letter of credit, bond, or self insurance), from the point in time that the Commission first permits ownership, possession and storage of special nuclear material at the site of the nuclear reactor.

The Commission believes that its existing financial qualifications review has done little to identify substantial health and safety concerns at nuclear power plants. However, there are matters important to safety which may be affected by financial considerations. Consequently, the Commission requests comment regarding the type of NRC review that would focus effectively on financial considerations that might have an adverse impact on safety.

B. *The Commission's Seabrook Decision.* In *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), CLI–78–1, 7 NRC 1 (1978) (hereinafter *"Seabrook"*), the Commission directed the staff "to initiate a rulemaking proceeding in which the factual legal, and policy aspects of the financial qualifications issue may be reexamined." 7 NRC at 20. Specifically, the staff was to examine the relationship between the financial qualifications of Part 50 applicants and licensees and their ability to safely construct and operate production and utilization facilities. Further, the staff was to prepare a proposed rule to serve as the basis for initiating the rulemaking described by the Commission in *Seabrook.*

In its *Seabrook* decision, the Commission first reviewed the statutory and regulatory basis leading up to the present financial qualifications requirements set forth in 10 CFR 50.33(f). The Commission observed that "[t]his history suggests that for established utilities with substantial operating records, close scrutiny of financial qualifications was not viewed as necessary to assure that financial considerations did not compromise safety." *Id.* at 11. The Commission went on to express its belief that financial qualifications of a regulated public utility have less bearing on assuring safety in construction and operation than for other applicants, even though the Commission noted, in the context of the present "reasonable assurance" requirement of § 50.33(f), that merely being a regulated public utility would not automatically satisfy § 50.33(f) as applied to a construction permit application. The Commission stated:

> While unexceptional in the abstract, this proposition is less compelling in the case of a regulated public utility engaged in a construction project which is itself subject to high safety standards and ongoing inspection. . . .
>
> In the absence of any demonstrated direct connection between financial qualifications and safety in the utility—either generally or in this case in particular—we are left with the essentially speculative claims of the parties.

Id. at 18. Finally, after characterizing the link between safety and financial qualifications as "seemingly tenuous," the Commission emphasized direct approaches for assuring safety: "[t]he resulting limited usefulness of the financial qualifications inquiry underscores the importance of ongoing inspections of reactor construction projects." *Id.* at 19.

C. *Earlier Public Comments:* Following the *Seabrook* decision, the NRC notified the public of its generic study of the financial qualifications issue (43 FR 22373, May 25, 1978). The notice requested interested members of the public to submit comments on the issue and to propose specific changes to the rules by July 24, 1978. Seven sets of comments were received. Six of the submittals were from electric utilities, the Edison Electric Institute (EEI), and law firms representing electric utilities. The seventh set of comments was from the National Consumer Law Center, Inc. The following is a summary of the relevant points made in these comments.

The utilities, the EEI, and the law firms recommended that the regulations be revised to substantially reduce the scope of NRC's financial qualifications review especially as it applied to applicants whose rates for service are either self-determined or are determined by state and/or federal regulatory agencies. These commenters generally maintained that a history of successful plant construction and operation coupled with the legal requirements placed on economic regulators together constitute "reasonable assurance" that adequate financing can be obtained (the presently-existing standard set forth in § 50.33(f)). This group of commenters further argued that "cutting-corners" in construction or operation is not in the self-interest of the utility, as it is imperative that a plant provide long-term operation reliably and safely in accordance with NRC regulations. The commenters said that the financial savings that could be achieved through "corner-cutting" would be small compared to the sums required to complete the project. The risk of detection by NRC inspectors and possible resulting legal action against the utility were cited as additional disincentives to violation of NRC's safety regulations.

One of the above commenters expressed a preference for complete elimination of the financial qualification findings as now required by the regulations. That commenter maintained that a causal relationship between financial qualifications and safety had not been demonstrated.

The National Consumer Law Center, Inc. (NCLC) commented that the existing regulation is inadequate in that it does not require the filing of sufficient financial information to demonstrate financial qualifications for a construction permit or an operating license. NCLC provided a detailed list of types of financial information that should be required of applicants. NCLC based its suggestion for NRC requiring such information on the premise that safe, reliable construction and operation of nuclear facilities is contingent upon the financial qualifications of the applicant. It stated that insufficient financing during construction could lead to the use of substandard materials and to costly delays in construction. NCLC further suggested that NRC should promulgate a regulation requiring that nuclear facilities constructed with a reasonable cost of financing and that failing to do so may financially burden the applicant and the applicant's owners and customers.

II. Separate Treatment of Decommissioning Costs

Generic study of the costs and financial arrangements for decommissioning nuclear power plants, as well as for other nuclear facilities, has been and will continue to be treated as a subject area separate from the more routine financial qualifications issues that were discussed by the Commission in *Seabrook.* With regard to decommissioning costs, the NRC recently published two documents: "Assuring the Availability of Funds for Decommissioning Nuclear Facilities" (NUREG–0584, Revision 2, October 1980) and "Draft Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: (NUREG–0586, January 1981). The generic study of decommissioning, including an applicant's financial ability to bear the costs thereof, and the publication of a proposed rule for comment are expected to be completed by March 1982. The Commission's treatment of decommissioning and its costs as a separate matter is thus expected to lead to a final rule on this subject. It is also expected that when the final policies and regulations are developed, they will be imposed on all Part 50 licensees, including the electric utility applicants and licensees affected by these proposed financial qualifications amendments.

As stated above, the Commission is proposing a possible alternative to the elimination of the entire financial qualifications review presently required by § 50.33(f) for electric utilities applying for operating licenses for nuclear power plants. This alternative would retain the present financial qualifications review and findings at the operating license stage as to the issue of decommissioning costs. Upon completion of the separate rulemaking on the decommissioning issue, the Commission will re-examine the financial qualifications regulations and will, if necessary, further amend them to conform to the final rule on decommissioning.

III. Other Basic Considerations and Aspects of the Proposed Rule

A. *Electric Utility and Other Applicants.* With regard to the financial qualifications issues as raised in *Seabrook*, the Commission continues to believe that technical reviews and inspection efforts are effective, direct methods of discovering deficiencies that could affect the public health and safety. While analysis of financial qualifications has been viewed in the past as possibly an additional method of determining an applicant's ability to satisfy safety requirements, experience has failed to show a clear relationship between the NRC's review of an applicant's financial qualifications and the applicant's ability to safely construct and operate a nuclear power plant.

As discussed above, such utilities are usually regulated by state and/or federal economic regulatory agencies, and generally recover the costs of constructing generating facilities through the ratemaking process, subject to the oversight of such state and/or federal agencies. As a result, reasonable costs necessary to meet a utility's obligations (including NRC-imposed safety requirements) are normally recovered through this ratemaking process. *See, e.g., FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works and Improvement Co.* v. *Public Service Commission of the State of West Virginia*, 269 U.S. 679 (1923). These landmark court decisions established the principle that public utility commissions are to establish a utility's rates such that all reasonable costs of serving the public may be recovered assuming prudent management of the utility. Therefore, one presumption that underlies this proposed rule is that regulated electric utilities (or those able to set their own rates) will be able to meet the costs for safe construction and operation of a nuclear production or utilization facility. The other presumption is that the more direct methods of ensuring safety—inspection and enforcement—will be reasonably effective in deterring any "corner-cutting" and in remedying safety problems.

The Commission has tentatively concluded that the present financial qualifications review can appropriately be eliminated for electric utility applicants, which can be presumed to be able to meet the financial demands of constructing and operating nuclear power plants. As an alternative to entirely eliminating the present financial qualification review, the Commission is considering retaining, at least as an interim rule, that portion of the current operating license review related to financing the permanent shutdown and maintenance of the facility in a safe condition.

The Commission proposes to retain its current review under § 50.33(f) of applicants for any production or utilization facility license, if such applicants are not electric utilities having either a regulated status or the authority to set their own rates for electric service. The § 50.33(f) financial qualifications review is also unchanged as to production or utilization facilities not covered by § 50.21b or § 50.22, *i.e.* medical utilization facilities, research and development facilities, and testing facilities.

B. *Additional Information That Can Be Required.* By this proposed rule, the Commission does not intend to waive or relinquish its residual authority to require such additional information in individual cases, as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked. See, for example, the fourth sentence of Section 182a of the Atomic Energy Act of 1954, as amended. Similarly, no change in the present powers of the Commission with regard to the financial qualifications review of non-utility applicants for Part 50 licenses is proposed. In addition, an exception to or waiver from the rule, if promulgated in final form, would be possible to require the submission of financial information from a particular electric utility applicant if special circumstances are shown pursuant to 10 CFR 2.758 in an individual licensing hearing.

C. *Practical Impacts.* The proposed rule will, in normal circumstances, reduce the time and effort which the applicants, licensees, the NRC staff and NRC adjudicatory boards devote to reviewing the applicant's or licensee's financial qualifications. The proposed rule aims at either reducing or eliminating staff review in cases where the applicant is an electric utility, presumed to be able to finance activities to be authorized under the permit or license.

D. *Interim Rule Requiring Property Damage Insurance.* At present, the Commission does not require licensees to maintain property damage insurance, or its equivalent. Under its responsibilities to protect the public health and safety, the Commission is concerned about the ability of a nuclear power plant licensee to finance the clean-up costs resulting from a nuclear-related accident. The Commission is considering the adoption of an interim rule which would require all licensees for operating power reactors to maintain the maximum amount of commercially available on-site property damage insurance, or an equivalent amount of protection. The proposed rule is intended to serve as an interim requirement until the Commission has an opportunity to conduct a rulemaking to determine what level of protection is necessary to cope with the on-site radiological hazards resulting from an accident. While the vast majority of licensees for operating power reactors currently maintain the maximum available amount of such insurance, the Commission understands that some utilities do not buy the maximum amount and one utility (TVA) self-insures for property losses. In view of the substantial importance to the public health and safety of adequately cleaning up nuclear accidents, the Commission is proposing that such maximum insurance coverage be mandatory (1) for a construction permit holder from the point in time that the Commission first permits ownership, possession and storage of special nuclear material at the site of the nuclear reactor, and (2) for all holders of nuclear power plant operating licenses. In other words, the insurance would be mandatory only when nuclear materials are on-site and not in the earlier construction stages. Within 90 days of the adoption of a final rule, licensees would have to demonstrate to the Commission's satisfaction that they possess the maximum amount of commercially available on-site property damage insurance or that they possess an equivalent amount of protection.

The impact of this proposed new requirement on construction permit holders and on licensees for operating power reactors is expected to be relatively small in comparison to total utility resources and the large consumer base for a nuclear power plant. The current property damage insurance premium for a two-unit site is approximately $1 million per year for maximum coverage with the premium for a one-unit site being proportionately les. For regulated utilities, insurance costs and the costs of complying with NRC regulations are normally passed through to consumers. All other utilities set their own rates and can pass such costs through to consumers at their own discretion.

IV. Proposed Application of the Final Rule

In summary, the Commission has tentatively concluded that adoption of the proposed rule will substantially reduce the effort of demonstrating financial qualifications without reducing

the protection of the public health and safety. If the proposed rule is promulgated as a final rule, it is the Commission's present intention to make it effective immediately upon publication, pursuant to 5 U.S.C. § 553(d)(1) since the rule is expected to significantly relieve the obligation of certain applicants with respect to information required for construction permits and operating licenses, and also to reduce the amount of unnecessary, time-consuming staff review and adjudicatory proceedings. In that regard, the Commission notes that the final rule, when effective, will be applied to ongoing licensing proceedings now pending and to issues or contentions therein. *Union of Concerned Scientists v. AEC*, 499 F.2d 1069 (D.C. Cir. 1974).

In addition, the NRC neither intends nor expects that the proposed rule, if and when finally effective, would affect the scope of any issues or contentions related to a cost/benefit analysis performed pursuant to the National Environmental Policy Act of 1968, either in pending or future licensing proceedings for nuclear power plants (utilization facilities under §§ 50.21(b) and 50.22). Under NEPA, the issue is not whether the applicant can demonstrate reasonable assurance of covering certain projected costs—the Atomic Energy Act issue dealt with in the proposed financial qualifications rule—but rather is merely what costs to the applicant of construction and operating the plant are to be put into the cost-benefit balance. As is now the case, the rule of reason will continue to govern the scope of what costs are to be included in the balance, and the resulting determinations may still be the subject of litigation. Thus, financial qualifications would not be expected to become an issue or contention in an NRC licensing proceeding insofar as NEPA might be involved.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule reduces certain minor information collection requirements on the owners and operators of nuclear power plants licensed pursuant to Section 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2133, 2134b. These electric utility companies are dominant in their service areas. Accordingly, there is no significant economic impact, nor are such owners and operators of nuclear power plants within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. § 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a preliminary determination that this proposed rule does not impose new information collection requirements. This proposed rule has nevertheless been submitted to the Office of Management and Budget for its consideration of any potential or new information collection requirements pursuant to Pub. L. 96-511.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of one of the two following alternative amendments to 10 CFR Part 50 is contemplated.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.41(i) issued under sec. 161i, 68 Stat. 949 (42 U.S.C. 2201(i)); §§ 50.70, 50.71 and 50.78 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C.2201(o), and the laws referred to in Appendices.

Alternative 1—Eliminate Entirely the Financial Qualifications Review And Findings As To Electric Utilities That Are Applying For Construction Permits And Operating Licenses For Production Or Utilization Facilities

1. Paragraph (f) in § 50.33 is revised to read as follows:

§ 50.33 Contents of applications; general information.

Each application shall state:

* * * * *

(f)(1) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought, *provided*, however, that no information on financial qualifications described in paragraphs (f)(1)(i) and (ii) of this section shall be required, nor shall any financial review be conducted, if the applicant is an electric utility applicant for a license to construct or operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

(i) If the application is for a construction permit, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction cost of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(ii) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant shall also indicate the sources(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as required in an application for an initial license.

(2) Except for electric utility applicants for construction permits and operating licenses, each application for a construction permit or an operating license submitted by a newly-formed entity organized for the primary purpose of constructing or operating a facility must also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) Their financial ability to meet any contractual obligation to such entity which they have incurred or propose to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualifications.

(3) Except for electric utility applicants for construction permits and operating licenses, the Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its

financial arrangements and status of funds if the Commission considers such information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.

* * * * *

2. Paragraph (b) in § 50.40 is revised to read as follows:

§ 50.40 Common standards.

* * * * *

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulation in this chapter, *provided*, however, that no consideration of financial qualifications shall be necessary for an electric utility applicant for a license for a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

3. A new paragraph (v) is added to § 50.54 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(v) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, within 90 days of the date this regulation becomes effective, have and maintain the maximum available amount of commercial on-site property damage insurance or demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering such facility.

4. A new paragraph (f) is added to § 50.55 to read as follows:

§ 50.55 Conditions of construction permits.

* * * * *

(f) Each electric utility that is a construction permit holder under this Part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 and who is also the holder of a license under Part 70 of this chapter authorizing only ownership, possession, and storage of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license under Part 50 of this chapter, shall, within 90 days of the date this regulation becomes effective, have and maintain the maximum available amount of commercial on-site property damage insurance or demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering such facility.

5. Paragraph (a)(4) in § 50.57 is revised to read as follows:

§ 50.57 Issuance of operating licenses.

* * * * *

(a) * * *

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter, *provided*, however, that no finding of financial qualifications shall be necessary for an electric utility applicant for an operating license for a production or utilization facility of the type described in § 50.21(b) or § 50.22.

* * * * *

6. Part 50 is amended by removing Appendix C.

Appendix C—[Removed]

Alternative 2—Eliminate The Present Financial Qualifications Review And Findings As To Electric Utilities That Are Applying For Construction Permits, And Also Eliminate The Financial Qualifications Review And Findings At The Operating License Stage For Electric Utilities, Except Retain The Portion Of That Review And Findings That Relates To Permanent Shutdown And Maintenance Of The Facility In A Safe Condition

1. Paragraph (f) in § 50.33 is revised to read as follows:

§ 50.33 Contents of applications; general information.

Each applcation shall state:

* * * * *

(f)(1) Information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought, *provided*, however, no information on financial qualifications described in paragraphs (f)(1) (i) and (ii) of this section shall be required, nor shall any financial review of the information required by paragraphs (f)(1) (i) and (ii) be conducted if the applicant is an electric utility applicant for a license to construct or operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

(i) If the application is for a construction permit, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction cost of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

(ii) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. The applicant shall submit estimates of total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to permanently shut down the facility and maintain it in a safe condition. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as required in an application for an initial license.

(iii) If the application is by an electric utility for a license to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22, information shall be submitted that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of permanently shutting down the facility and maintaining it in a safe condition. The applicant shall submit estimates of these costs, and shall also indicate the source(s) of funds to be used to cover these costs.

(2) Except for electric utility applicants for construction permits and operating licenses, each application for a construction permit or an operating license submitted by a newly-formed entity organized for the primary purpose of constructing or operating a facility shall also include information showing:

(i) The legal and financial relationships it has or proposes to have with its stockholders or owners;

(ii) The financial ability of such stockholders or owners to meet any contractual obligation to such entity which they have incurred or propose to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualifications.

(3) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers such information appropriate. This may

include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to permanently shut down the facility and maintain it in a safe condition.

2. Paragraph (b) in § 50.40 is revised to read as follows:

§ 50.40 Common Standards.

* * * * *

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter, *provided*, however, that consideration of the financial qualifications of an electric utility applicant shall be made only in the case of an operating license application for a production or utilization facility of the type described in § 50.21(b) or § 50.22, and shall be limited in such a case to consideration of an applicant's ability to provide the funds, or to show that it has reasonable assurance of obtaining the funds, necessary to cover the estimated costs of permanent shutdown and maintenance of the facility in a safe condition.

* * * * *

3. A new paragraph (v) is added to § 50.54 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(v) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, within 90 days of the date this regulation becomes effective, have and maintain the maximum available amount of commercial on-site property damage insurance or demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering such facility.

4. A new paragraph (f) is added to § 50.55 to read as follows:

§ 50.55 Conditions of construction permits.

* * * * *

(f) Each electric utility that is a construction permit holder under this Part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 and who is also the holder of a license under Part 70 of this chapter authorizing only ownership, possession, and storage of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license under Part 50 of this chapter, shall, within 90 days of the date this regulation becomes effective, have and maintain the maximum available amount of commercial on-site property damage insurance or demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering such facility.

5. Paragraph (a)(4) in § 50.57 is revised to read as follows:

§ 50.57 Issuance of operating licenses.

* * * * *

(a) * * *

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter, *provided*, however, that a finding of financial qualification shall be made only in the case of an application to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22, and shall be limited in such a case to the applicant's ability to provide the funds, or to show that it has reasonable assurance of obtaining the funds, necessary to cover the estimated costs of permanent shutdown and maintenance of the facility in a safe condition.

* * * * *

6. Part 50 is amended by removing Appendix C.

Appendix C—[Removed]

Dated at Washington, D.C. this 13th day of August, 1981.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary.

[FR Doc. 81-24068 Filed 8-17-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6339; File No. S7-891]

Proposed Revision of Certain Exemptions from the Registration Provisions of the Securities Act of 1933 for Transactions Involving Limited Offers and Sales

AGENCY: Securities and Exchange Commission

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a new regulation governing the offers and sales of certain securities without registration under the Securities Act of 1933. This action represents an effort by the Commission to coordinate the various limited offering exemptions and to streamline the existing requirements applicable to private offers and sales of securities. Proposed Regulation D, if adopted, would replace the existing limited offering exemptions contained in Commission Rules 146, 240, and 242.

The Commission is requesting comments on the specific provisions of the proposed rules and also whether the proposals considered together provide a more coordinated exemptive scheme for limited offering transactions particularly as they relate to the capital formation needs of small business.

DATE: Comments must be received on or before October 5, 1981.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-891 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula L. Chester, (202)/272-2644 Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment Regulation D, a series of new rules governing the limited offer and sale of securities pursuant to the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77c(b), 77d)2)]. Proposed Regulation D is intended to result in a more coherent pattern of exemptive relief, particularly as it relates to the capital formation needs of small business. In this regard, proposed Regulation D brings together the current limited offering exemptions contained in Rules 146 [17 CFR 230.146], 240 [17 CFR 230.240], and 242 [17 CFR 230.242]. Thus, certain common terms such as "accredited investor" and "securities of the issuer" are defined as those terms are used throughout the regulation, and a common rule sets forth the informational requirements, the limitation on the manner of the offering, the limitations on resale, the safe harbor provision with respect to integration, and a uniform notice-of-sales for the three exemptions contained in the Regulation. In addition, proposed Regulation D would result in a number of significant substantive changes from present Rules 146, 240, and 242 as explained below.

I. Background

The registration requirements of the Securities Act and the exemptive

scheme therefrom have been criticized by commentators as disproportionately burdensome for small issuers. Three years ago the Commission, in its concern that compliance with the Securities Act should not inadvertently operate to impair capital formation by small businesses, undertook an extensive and detailed examination of the federal securities laws as they relate to those businesses. The Commission held public hearings in April and May of 1978 for the purpose of determining the extent to which the burdens imposed on small businesses may be alleviated consistent with the protection of investors.

A study of the record developed at the hearings indicated that most of the problems faced by small businesses result from factors outside the scope of the federal securities laws.[1] Witnesses did state, however, that a number of requirements under the Securities Acts are not justified as applied to small business. In response to some of those concerns, the Commission has taken a number of actions that are designed to assist small business capital formation and reduce the burdens imposed by the federal securities laws as applied to small businesses. For example, Rule 242 was adopted to respond to some of the criticisms of Rule 146; the aggregate amount of securities that may be offered pursuant to Regulation A [17 CFR 230.251–264] was increased from $500,000 to $1,500,000; an amendment to Regulation A was added to permit the use of a preliminary offering circular prior to the commencement of an offering; Rule 144 [17 CFR 230.144] was amended to increase or eliminate under certain conditions the resale volume limitations; and Form S–18 [17 CFR 239.28], a simplified registration statement for companies going public for the first time, was introduced.[2]

Prior to the enactment of the Small Business Investment Incentive Act of 1980 (the "Incentive Act") [Pub. L. No. 96–477 (October 21, 1980)] Rules 146, 240, 242, Regulation A amd Form S–18 provided the basic regulatory scheme most typically relied upon by small business.[3] The Incentive Act, however, included three statutory changes in the Securities Act that have an impact on small business capital formation. The first was the addition of Section 4(6) to the Securities Act[4], which provides an exemption from the registration requirements of that Act for offers and sales of securities by an issuer solely to accredited investors[5] without any public solicitation if the aggregate amount of securities offered is $5 million or less. In connection therewith, the issuer is required to file a notice of such sales with the Commission on such forms as the Commission shall prescribe.[6] The second amendment to the Securities Act added by the Incentive Act increased the ceiling from $2 million to $5 million of the Commission's authority under Section 3(b) to exempt small offerings from the registration requirements of the Securities Act.

In addition, Title V of the Incentive Act created new Section 19(c) of the Securities Act which, among other things, authorizes the commission to work with state securities associations in effectuating greater uniformity in Federal-State securities matters.[7] Subparagraph (3) of Section 19(c) specifically provides for the development of a uniform exemption from registration for small issuers which can be agreed upon between the States and the Federal Government.

As result of the Incentive Act, particularly the significant increase in the Section 3(b) ceiling and the authorization granted to the Commission to work with the states to develop a uniform exemption, the Commission determined to re-evaluate the Securities Act exemptive scheme. Thus, the Commission on December 23, 1980, announced that it was considering the relationship among certain exemptions from the registration provisions of the Securities Act and the efficacy of such exemptions as they relate to the capital formation needs of small business.[8] The Commission requested commentators to focus on the interrelationship between the recently enacted Section 4(6) exemption and the Commission's other

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[1] Summary Comments Relating to Small Business Hearings and Proposed Form S–18, Division of Corporation Finance, Securities and Exchange Commission, File No. S7–734. [Hereinafter cited as "Small Business Hearings".]

[2] A summary of the Commission actions is set forth in Securities Act Release No. 6049 (April 3, 1979) [45 FR 21562] and Securities Exchange Act Release No. 16886 (June 2, 1980) [45 FR 40145]. Subsequently, in Securities Act Release No. 6299 (March 19, 1981) [46 FR 18947], the Commission adopted amendments to Form S–18 that expanded the availability of the Form to companies engaged in significant mining operations. As a result of that action, the Commission most recently adopted similar amendments to Rule 242 in Securities Act Release No. 6321 (June 11, 1981) [46 FR 31880].

[3] A chart setting forth the current exemption scheme is attached at appendix A.

[4] The provisions of Section 4 of the Securities Act provide in pertinent part:

The provisions of Section 5 shall not apply to—

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price does not exceed the amount allowed under Section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the commission as the commission shall prescribe.

[5] New Section 2(15) of the Securities Act provides:

(15) the term "accredited investor" shall mean—

(i) a bank as defined in Section 3(a)(21) of the Act whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section (2) (48) of that Act; a Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Securities Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualities as an accredited investor under rules and regulations which the Commission shall prescribe.

[6] In order to permit issuers to utilize Section 4(6) promptly after the enactment of the Incentive Act, the Commission adopted, on an interim basis, a notice-of-sales form [hereinafter referred to as "Form 4(6)," to be used by issuers relying on the new statutory exemption. Securities Act Release No. 6256 (November 7, 1980) [45 FR 75182]. The final form was adopted in Securities Act Release No. 6301 (March 19, 1981) [46 FR 18531].

[7] the provisions of new Section 19(c) provide in pertinent part:

(c)(1) The Commission is authorized to cooperate with any association of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State coopeation in securities matters including—

(A) maximum effectiveness of regulation,

(B) maximum uniformity in Federal and State regulatory standards,

(C) minimum interference with the business of capital formation, and

(D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

(A) the sharing of information regarding the registration or exemption of securities issuers applied for in the various States;

(B) the development and maintenance of uniform securities forms and procedures; and

(C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this Act shall be construed as authorizating preemption of State law. . . .

[8] Securities Act Release No. 6274, (December 23, 1980) [46 FR 2631]

exemptive rules, particularly Rules 146 and 242.[9] The Commission also requested comments on the adequacy of the present ceiling limitations included in the exemptions under Section 3(b) and the extent, if any, to which they should be increased.

Commentators were also requested to provide their views on the broader question of whether the exemptions under the Securities Act provided by Rules 240, 242, Regulation A, and Rule 146, along with the newly created Section 4(6) exemption considered together provide a coherent scheme for relieving issuers of the burdens of the registration provisions, particularly by smaller companies, consistent with adequate investor protection and, if not, what steps the Commission should take make the scheme more coherent. The comments received were intended to assist the Office of Small Business Policy in the Division of Corporation Finance in the development of future rulemaking proposals.

The Commission received 38 letters of comment. Although commentators criticized the present exemptive scheme as unnecessarily complex the recommendations for amendments to the exemptive scheme to correct these problems varied considerably. As a result of the comments receive, which are discussed below, and discussions with the North American Securities Administrators Association ("NASAA") Subcommittee on Small Business Financing, the Commission is today proposing significantly revise Rules 146, 240, and 242 and to consolidate them into one regulation that would govern transactions involving the limited offer and sale of securities. The Commission is also today adopting amendments to the disclosure provisions of Regulation A and is considering amendments to Form S–18 that would expand the availability of that Form to all issuers. As more fully discussed below, these amendments are intended to provide a basic component to other rulemaking initiatives that are part of the Commission's ongoing small business program.

II. Discussion

Proposed Regulation D is a series of six rules, designated Rules 501–506 [17 CFR 230.501–230.506]. Proposed Rules 501 and 502 would define common terms and set forth general conditions to be met which apply to the exemptions contained in the Regulation. Proposed Rule 503 would provide for a uniform notice of sales form, designated Form D [17 CFR 239.500] to be used for all exempt offerings under the Regulation and Section 4(6) of the Securities Act. Proposed Rules 504–506 would contain the specific exemptions from the registration provisions of the Securities Act and would replace current Rules 240, 242, and 146.

Proposed Rule 504 is an expansion of the Commission's current Rule 240. The principal differences between proposed Rule 504 and Rule 240 are: (1) an increase in the limitation on the amount that can be sold in any 12 month period under the Rule from $100,000 to $500,000; (2) removal of the prohibition in Rule 240 against the payment of brokerage commissions, provided such commissions are paid to broker-dealers registered both under the Exchange Act and pursuant to applicable regulations in those states in which the securities are to be offered or to any bank as defined in Section 3(a)(2) of the Securities Act; (3) elimination of the requirement that there be no more than 100 shareholders at the time the offer is completed and, in lieu thereof, a restriction on the availability of the rule to issuers not subject to the reporting requirements of the Exchange Act; and (4) elimination of restrictions concerning manner of offering and restrictions on resale where the offering is limited to states in which the offering is registered and a disclosure document is delivered pursuant to applicable law. As in current Rule 240, no specific disclosure requirements would be prescribed. This proposal reflects the unanimous opinion expressed by commentators, and the Commission concurs, that there is a need for a *de minimis* exemption from federal regulation, and that state "Blue Sky" requirements and the antifraud provisions of the federal securities laws would afford adequate protection.

Proposed Rule 505 would replace current Rule 242 and continue to permit sales to an unlimited number of accredited investors and to 35 non-accredited investors. The principal features of proposed Rule 505 include: (1) the expansion of the availability of the rule to all issuers regardless of legal structure or line of business; (2) a revision of the informational requirements to provide for information similar to that provided by Regulation A for offerings in amounts not exceeding $1,500,000 and Form S–18 type disclosure for offerings in amounts between $1,500,001 and $5,000,000; (3) an increase in the aggregate offering limitation from $2,000,000 in a six month period to $5,000,000 in a 12 month period; (4) a provision identical to that contained in proposed Rule 504 permitting the payment of brokerage commissions if such commissions are paid to broker-dealers registered both under the Exchange Act and pursuant to applicable regulations in those states in which the securities are to be offered; and (5) elimination of the availability of this rule for those issuers who have been subject to the reporting requirements under the Exchange Act for 36 calendar months preceding the offering.

Proposed Rule 506 would modify existing Rule 146 in several respects. Currently, Rule 146 requires the issuer to make a subjective determination prior to making any offers of securities that each offeree has such knowledge and experience in financial matters that he is capable of evaluating the merits and risks of the prospective investment or that such offeree is able to bear the economic risk of the investment.[10] The Commission is proposing to eliminate the requirement to determine the qualifications with respect to each offeree whether or not be purchases. The provision that no offer to sell the securities may be made by any form of general solicitation or general advertising will be retained and the Commisison beleives that this requirement is sufficient to assure that an offering is private in nature. The requirement that the issuer make a determination as to the qualifications of the purchaser will be retained in modified form. However, the Commission is proposing to incorporate the accredited investor concept into the rule. Thus, certain purchasers would be presumed to meet the purchase qualifications, thereby eliminating the need for subjective judgments by the issuer about the suitability of such investors. Proposed Rule 506 would also: (1) eliminate the need to deliver disclosure documents if only accredited investors participate in the transaction; (2) permit sales to an unlimited number of accredited investors and to 35 non-accredited investors provided such non-accredited investors meet certain qualifications; and (3) retain the

[9] As indicated in the Commission's release, these three exemptions are all limited offering exemptions in that they prohibit public solicitation and general advertising and limit the offerees and/or purchasers to specific types of individuals and/or to a specific maximum number of individuals.

[10] Rule 146(d) provides in pertinent part:

(d) Nature of offerees. The issuer and any person acting on its behalf who offer, offer to sell, offer for sale or sell the securities shall have reasonable grounds to believe and shall believe:

(1) Immediately prior to making any offer, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the proposective investment, or

(ii) That the offeree is a person who is able to bear the economic risk of the investment; and . . .

"purchaser representative" concept to permit the continued participation by persons who, acting alone, may lack the requisite knowledge and experience to independently evaluate the merits and risks of the investment.

A major change in the proposed exemptive scheme concerns the limited availability of the exemptions to issuers subject to the reporting requirements under the exchange Act. Consistent with existing Rule 240, companies subject to the Exchange Act reporting requirements would not be able to use proposed Rule 504. Proposed Rule 505 would represent a departure from current Rule 242 in that issuers who have been reporting companies for 36 months would be excluded from its use. These restrictions represent the Commisison's opinion that Rules 504 and 505 have been designed primarily for smaller issuers that are not subject to periodic disclosure requirements and for which the preparation of offering circulars and the expenses resulting from the registration process may be disproportionately burdensome.

Moreover, companies that have been subject to the reporting requirements for more than 36 months will benefit from the new simplified registration process which the Commission has proposed in Forms S–2 and S–3 [11]. The proposed new registration process will substantially reduce the burdens traditionally associated with registration by allowing existing reports to be used instead of extensive prospectuses. Because of the proposed alternative methods of registration and these attendant savings, the Commission believes public companies should be encouraged to register their offerings or rely on proposed Rule 506. In view of the unrestricted availability of the alternatively statutory exemption to Rule 506 contained in Section 4(2) of the Securities Act, Rule 506 may be utilized by any reporting company.

In view of the proposals outlined herein, particularly the expanded availability of current Rule 242 to all issuers, the increase to $5 million of the aggregate amount of securities that can be sold as proposed in Rule 505, and the incorporation of the accredited investor concept in proposed Rule 506, the Commission recognizes that Regulation D, if adopted, may provide a more attractive alternative to registration for smaller issuers than the recently enacted Section 4(6) exemption. It should be noted, however, that purported reliance on the exemptions contained in proposed Regulation D will not act as election; the issuer can also claim the availability of the statutory exemption provided by Section 4(6). Thus, the uniform notice of sales form proposed herein would be used by any issuer claiming the availability of Section 4(6) as well as those securities sold in reliance on the proposed Regulation, or both. In addition, the Commission is proposing to define "accredited investor" for transactions effected in reliance on Section 4(6) pursuant to its authority under Section 2(15) of the Securities Act which would be identical to the definition contained in the proposed Regulation.

III. Other Related Small Business Initiatives

The structure of Regulation D has been coordinated with other small business initiatives proposed today and which the Commission anticipates proposing in the near future. These initiatives parallel similar requirements in proposed Regulation D and are designed to achieve a greater degree of uniformity with respect to such requirements.

In conjunction with the proposal of Regulation D, the Commission has issued a release adopting amendments to the rules, forms and disclosure requirements under Regulation A.[12] The amendments, which involve a comprehensive revision and updating of the disclosure requirements, are designed to reduce the time spent in processing and thereby reduce costs by codifying the disclosure policies and practices currently followed on an administrative basis.

However, in view of the widespread acceptance of Form S–18 and the substantial similarities between the narrative disclosure requirements of Form S–18 and the amendments to Regulation A adopted today, it is the Commission's view that Form S–18 may obviate the continued need for such an exemption. Consequently, the Commission is considering the advisability of rescinding Regulation A and combining Form S–18 and Regulation A into one uniform registration form specifically tailored for public offerings by small issuers, with substantially reduced audited financial statements requirements for transactions involving less than $3,000,000 aggregate amount of securities. Before proceeding with a uniform registration statement for small public offerings, the Commission recognizes that it must also evaluate the impact of certain compliance burdens imposed by the periodic disclosure requirements mandated by the Exchange Act [13] for those issuers that would otherwise offer securities in reliance on Regulation A without automatically incurring such reporting burdens. If these requirements can be reduced by classifying companies so that defined classes of small issuers might be relieved of certain reporting and other requirements [14], the Commission will consider the feasibility of eliminating Regulation A.

In addition to the rulemaking proposals announced today, the Commission has under consideration certain amendments to Form S–18 which will be proposed in the near future. The Commission intends to expand the availability of Form S–18 to non-corporate issuers and to those issuers who engage or intend to engage in oil and gas related operations. The expansion of Form S–18 will parallel the availability of proposed Rule 505 and allow the continued use of coordinated disclosure provisions. In this regard, disclosure provisions applicable to these types of issuers will also be proposed.

IV. Development of Uniform Limited Offering Exemptive Scheme

In conjunction with its examination of the exemptive rules the Commission's Division of Corporation Finance has had discussions with NASAA in order to achieve a greater degree of uniformity between the federal and state limited offering exemptive schemes. The Commission understands that the NASAA Board of Directors has approved for comment by the NASAA membership a coordinated regulatory approach with respect to proposed Rules 504, 505 and 506 and will simultaneously be soliciting comments on the proposed uniform exemptions from its members.

As currently envisioned, the Commission would defer to the states for the regulation of offerings meeting the conditions of proposed Rule 504. Because of the small amount of the offering and the likelihood that such sales will occur in a limited geographic area, the Commission and NASAA have

[11] Securities Act Release No. 6331 (August 6, 1981).

[12] Securities Act Release No. 6340 (August 7, 1981).

[13] Section 15(d) of the Exchange Act provides that each issuer that files a registration statement which is declared effective pursuant to the Securities Act must also file with the Commission such supplementary, periodic, and current reports as may be required with respect to a security registered pursuant to Section 12 of the Exchange Act for the fiscal year in which the registration statement has become effective. The duty to file reports continues for any subsequent year unless the securities of each class to which the registration statement relates are held by less than 300 persons at the beginning of the issuer s fiscal year.

[14] *See* Securities Exchange Act Release No. 16806 (June 2, 1980) (45 FR 40145).

agreed that greater emphasis on state blue sky laws is appropriate. Accordingly, in view of the limited federal interest in offerings below $500,000 by non-reporting companies, proposed Rule 504 would, in effect, apply only the Securities Act and Exchange Act anti-fraud provisons at the federal level.

Proposed Rule 505, plus the applicable definitions and conditions to be met contained in Rules 501, 502 and 503, would be adopted as a uniform exemption. The Commission and NASAA understand that certain states may wish to adopt additional requirements regarding the suitability of the investment for non-accredited investors. Accordingly, NASAA has developed a uniform suitability provision for non-accredited investors which could be adopted in an alternative formulation of Rule 505. The NASAA uniform suitability requirements which would generally require the issuer to meet one of the three following conditions:

(1) The investment is suitable for the purchaser upon the facts, if any, disclosed by such purchaser as to his other security holdings and as to his financial situation and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed 25% of the investor's net worth, it is suitable;

(2) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment; or

(3) There is a relationship between the non-accredited investor and the principles, executive officers or directors of the issuer evincing trust between the parties. Such relationships as close business associates, family ties, and friends or acquaintances would be deemed to satisfy this condition.

Finally, proposed Rule 506 would also be adopted as a uniform rule specifying all requirements applicable to offerings in excess of $5 million.

The Commission and NASAA believe the uniform limited offering exemptive scheme as outlined herein will reduce the burdens on small issuers by eliminating in most instances the multiplicity of regulations imposed at both the state and federal levels. Commentators are therefore requested to formulate their comments on Regulation D in light of the uniform concept.

Request for Comments

The Commission believes that proposed Regulation D in conjunction with the proposed amendments to Regulation A and Form S–18 and the development of a uniform limited offering exemptive scheme will, if adopted, provide a coherent scheme for the raising of capital by small businesses. Moreover, the coordinated design of Regulation D and the new simplified registration process will create a rational approach to the capital formation needs of issuers from early growth stages to maturity. Commentators are therefore requested to comment on the overall Securities Act registration and exemptive scheme as it relates to the raising of capital by small business.

V. Synopsis

The following discussion of proposed Regulation D is included to assist all interested persons in their understanding of the proposed exemptive scheme under the Securities Act published herein. However, attention is directed to the text of proposed Regulation D for a more complete understanding.

A. Preliminary Notes

Proposed Regulation D contains six preliminary notes, all of which are found in one, two, or all of Rules 146, 240 and 242. As in the case of the current exemptive rules, these notes provide general guidance as to the scope and the applicability of exemptions provided. Certain preliminary notes currently in Rules 146, 240, and 242 have been deleted since they were inapplicable or considered to be unnecessarily repetitive of the provisions of the Regulation. Others have been relocated into the text of the Regulation.

The first preliminary note reminds issuers that transactions effected pursuant to Regulation D, while exempt from Section 5 of the Securities Act, are not exempt from the anti-fraud provisions of the federal securities laws, the civil liability provisions of Section 12(2) of the Securities Act or other provisions of the federal securities laws. In addition, the note reminds issuers that, in those instances where disclosure is furnished to investors, additional information may be required to be furnished in order to make the required disclosures, in the light of the circumstances under which they are furnished, not misleading. The second note indicates that reliance on Regulation D does not obviate the need to comply with any applicable state law relating to the offer and sale of securities. Note 3 makes clear that reliance on an exemption provided by Regulation D does not act as an election; the issuer may have the availability of any other applicable exemption.

Note 4 specifies that the exemptive rules contained in proposed Regulation D are available only to the issuer of securities and are not available to affiliates or other persons for resales of the issuer's securities. The securities acquired in a transaction effected in reliance on this regulation, except as specifically provided in certain offerings pursuant to proposed Rule 504, are restricted securities and cannot be resold without registration under the Securities Act or an exemption therefrom.

Finally, the preliminary notes provide that the proposed regulation is not available to any issuer with respect to any transaction which, although in technical compliance with the rules contained herein, is part of a plan or scheme to evade the registration provisions of the Securities Act. In such cases, registration pursuant to the Securities Act is required.

B. Rule 501—Definitions and Terms Used in the Regulation

The majority of commentators in addressing the interrelationship of the private offering exemptions, advocated the use of uniform definitions in order to achieve a greater degree of clarity and to remove certain inconsistencies which are present in the current exemptive scheme. In response to these concerns, the Commission re-examined the definitions contained in current Rules 146, 240 and 242 and has eliminated existing inconsistencies by proposing common definitions to be included in Rule 501. Generally, the proposed definitions are similar to those contained in the existing rules. However, the definitions of "accredited investor" and "securities of the issuer" have been modified to reflect suggestions proffered by commentators and the Commission's experience.

1. *Accredited Investor.* The vast majority of commentators favored the adoption of a uniform definition of accredited investor for purposes of Rule 242 and Section 4(6) and endorsed introducing the concept into Rule 146. While interested persons were consistently in favor of uniformity, there was a difference of opinion as to how the definition of accredited investor should be formulated.[15] In response to

[15] Among the suggested changes which are not included in proposed definition of accredited investor were the following: 1) substituting the present $100,000 purchase requirement found in Rule 242(a)(1)(ii) for a percentage of the offering test (e.g., 5% of the total offering); 2) introducing the

Continued

these comments, the Commission has determined to propose for purposes of Section 4(6) and Regulation D a single definition of accredited investor which would include the institutional investors listed in Section 2(15)(i) of the Securities Act and 6 additional classes of accredited investors contained in proposed Rule 215 [16]. By incorporating paragraph (i) of Section 2(15), this definition would, unlike current Rule 242(a)(1), include as accredited investors business development companies as defined in Section 2(a)(48) of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a-2(a)(48).][17]

Proposed Rule 2(15) would include current Rule 242(a)(1)(iii) (officers and directors of the issuer), modify subparagraph (ii) of Rule 242(a)(1) ($100,000 purchasers), and propose four new categories of accredited investors. The proposals would modify Rule 242(a)(1)(ii) to allow the use of an unconditional obligation to pay to be discharged within two years of the first issuance of the securities if such obligation is secured by an unconditional letter of credit issued by a bank as defined in Section 3(a)(2) of the Securities Act. This provision is intended to replace current Rule 146(g)(2)(d) which provides that those individuals who purchase $150,000 of the issuer's securities either in one lump sum or in installments will not be counted for purposes of the 35 purchaser limitation contained in the Rule. The Commission is concerned that in some instances installment obligations are being spread over such periods of time that, together with interest rates being charged, the present value of the note is substantially less than $150,000. Consequently, such a purchaser may not have adequate bargaining power, especially where there are a significant number of individual purchasers each executing comparable installment notes. *See* discussion of proposed Rule 502(b)(1) regarding informational requirements. Therefore, the Commission is proposing to allow the continued use of the installment obligation for the purchase of securities in amounts of $100,000 or more provided that, among other things, the payment period does not extend beyond two years.

Under this proposal, such purchasers will be given the status of accredited investors and therefore continue to be excluded from the 35 purchaser computation. Although the Commission believes this proposal will provide the added degree of flexibility currently found in Rule 146 with respect to installment obligations, commentators are requested to provide their views with respect to the two year limitation, particularly in light of the additional categories of accredited investors discussed below.

The Commission is also proposing to add four new categories of accredited investors: (a) any entity organized for the purpose of making investments in securities described in Sections 55(a) (1) through (3) of the Investment Company Act and which makes available significant managerial assistance with respect to the issuer of such securities. This new category will allow privately held entities which perform functions similar to those of business development companies to be treated as accredited investors; (b) any college or university endowment funds which at the time of investment have net assets in excess of $25 million; (c) any natural person whose individual net worth is in excess of $750,000; and, (d) any natural person whose most recent individual annual adjusted gross income exceeded $100,000 as reported for federal income tax purposes in his most recent tax return (individual not joint income). The last two proposals address the concerns of many commentators who believed the Commission should develop an objective test for individuals who purchase less than $100,000. These commentators criticized the current definition of accredited investor as excluding many persons with financial experience and sophistication who invest sums of less than $100,000 who should nevertheless be included in the definition. These new categories which have been added in response to those concerns are consistent with similar types of exemptions followed under several state securities laws and have been developed in consultation with NASAA.

The Commission is specifically requesting comment as to whether the last two categories of accredited investor are desirable and, if so, whether the net worth and income requirements set forth are appropriate.

2. *Securities of the Issuer.* For purposes of defining securities of the issuer, Rule 501(j) incorporates the definitions contained in current Rule 242(a)(6) with one important modification. Any securities of an issuer who may be an affiliate of another issuer solely by virtue of a common affiliation with a business development company as defined in Section 2(a)(48) of the Investment Company Act or with any entity as described in Rule 501(a)(2) shall not be deemed to be securities of the issuer for purposes of this Regulation. The exception of securities issued by an affiliate or common affiliates with a business development company should alleviate the concerns expressed by many commentators of potentially aggregating the offering of a venture capital firm with the offering of one of its portfolio companies, or the offering of one portfolio company with the offering of another.

3. *Other Definitions.* The Commission proposes to retain for purposes of Regulation D the definitions of "affiliate," [18] "business combination," [19] "executive officer," [20] "issuer" [21] and "predecessor" [22] as they are currently defined in the current exemptive rules. The definition of "purchaser representative" in paragraph (i) is identical to the definition of "offeree representative" found in current Rule 146(a)(1) with the term "purchaser" substituted for "offeree." This change reflects the elimination of the offeree qualification requirements.

Finally, the Commission is proposing to consolidate two definitions which appear in more than one exemptive rule. First, current Rules 146(g)(2)(i) and 242(e)(2) each contain provisions regarding the types of purchasers that may be excluded in calculating the number of purchasers for purposes of the 35 purchaser limitation. Proposed Rule 501(d) would provide one set of provisions for purposes of Rules 505 and

concept of self-certification by the investor to the Commission as to net worth, sophistication and financial experience; 3) including persons who have a net worth five to ten times the amount invested; and 4) inclusion of professionals such as executive officers of large corporations, attorneys who practice in the securities field, accountants, financial analysts, and registered investment advisers.

[16] The definition of accredited investor as contained in Section 2(15) of the Securities Act and as proposed in Rule 215 thereunder has been reprinted in Regulation D for ease of reference.

[17] In response to the special needs of venture capital companies, the Incentive Act created a special pattern of regulations under the Investment Company Act for those venture capital entities which qualify as business development companies. The purpose of this unique regulatory approach is to encourage the contributions venture capitalists may make to the capital formation process by investing in and providing managerial assistance to small, growing businesses. *See* S. Rep. No. 958, 96th Cong., 2d Sess., 4–5 (1980).

[18] Affiliate is defined in Rule 242(a)(2).

[19] Business combination is defined in Rule 146(f)(1).

[20] Executive Officer is defined in Rule 242(a)(3). This definition has been modified to include executive officers of subsidiaries if they perform policy functions similar to those of executive officers of the issuer. this will allow the definition of executive officer to be identical to that contained in proposed rule 405(m). *See* Securities Act Release No. 6333 (August 6, 1981).

[21] Issuer is defined in Rule 146(a)(2).

[22] Predecessor is defined in rule 242(a)(4).

506. The uniform provision would modify the existing provisions in three respects: (1) the exclusion for accredited investors would apply to offers and sales pursuant to Rule 506; (2) as suggested by commentators, the requirement that a purchaser have a 100 percent beneficial interest in any trust, estate or corporation would be reduced to any amount in excess of 50 percent; and (3) the current exclusion under 146(g)(2)(i)(d) for any person who purchases, in installments, securities in the aggregate amount of $150,000 would be modified as explained above.

Proposed Rule 501(e) would also consolidate the definitions currently included in the notes to Rules 240(e) and 242(c) regarding the computation of aggregate offering price. The porposed definition is identifcal to the note in Rule 242(c).

C. Rule 502—General Conditions To Be Met

In order to coordinate further the exemptive scheme, Rule 502 sets forth the general conditions which apply to all exempt offers and sales effected pursuant to Rules 504, 505 and 506. The conditions under this rule relate to integration, information requirements, limitations on manner of offering, and limitations on resale.

1. *Integration.* In order to obtain the protection of the exemptive rules proposed herein, all sales which are part of the same issue must meet all applicable conditions of the rules. However, the term "issue" is not defined in the Securities Act or in any rule thereunder. Integration is a concept by which two or more offerings which are intended to be exempt from registration could be combined into one offering with a resulting violation of the registration provisions of the Securities Act. Generally, the determination as to whether separate sales are part of the same issue and are, therefore, deemed to be integrated depends on the particular facts and circumstances. The Commission has announced that, in determining whether offers and sales should be regarded as a part of a larger offering and thus should be integrated, the following factors should be considered:

(1) Whether the offerings are part of a single plan of financing;

(2) Whether the offering involves issuance of the same class of security;

(3) Whether the offerings are made at or about the same time;

(4) Whether the same type of consideration is to be received; and

(5) Whether the offerings are made for the same general purpose.[23]

In order to add a degree of certainty to the integration concept, the Commission is proposing a uniform safe harbor provision applicable to Regulation D. Paragraph (a) of Rule 502 provides that, in determining which securities constitute a single issue for purposes of the exemptive rules, sales of securities occurring more than six months prior to and six months subsequent to the subject offering will not be considered part of the same issue if, during either of the six-month periods, there were no offers or sales of securities by or for the issuer of the same or a similar class as those of the subject offering. However, during the six month "window periods" offers and sales pursuant to certain employee plans[24] will be permitted and will not destroy the safe harbor.[25] The uniform safe harbor provision, which was supported by the majority of the commentators, is identical to those contained in Rules 146(b)(1) and 242(b) with one exception. Sales pursuant to any Section 3(b) exemption during the six month "window periods" as currently provided by paragraph (b) of Rule 242 will no longer be permitted for the safe harbor.

In those instances where the safe harbor provision is not available, the factors set forth in Securities Act Release No. 4552 discussed above would be applicable.

2. *Information Requirements.* The Commission is proposing new information requirements which would provide for a more logical and coherent structure than that contained in the present exemptive scheme. Under the proposed rule, the necessity of furnishing information would depend upon the type of investors participating in the offering, and the level of disclosure required would, in the case of an issuer not subject to the reporting requirements under the Exchange Act, be modified to reflect the amount of the offering. An issuer subject to the periodic reporting requirements would, as explained below, generally be required to furnish purchasers with its most recent annual report to shareholders, proxy statement and any subsequent monthly or quarterly reports, and undertake to furnish its most recent annual report on Form 10-K on request.

Pursuant to Rule 502(b)(1) no specific information would be required to be furnished for offers and sales effected pursuant to proposed Rule 504 or offers and sales effected in reliance on proposed Rules 505 and 506 which are made solely to accredited investors. If a Rule 505 or 506 offering involves non-accredited investors, the issuer would be required to furnish specified information to all investors in the same manner as currently required by Rule 242. However, the Commission proposes to modify this requirement in those instances where 60% or more of the total offering is purchased by one or more accredited institutions as defined by paragraphs (a)(i), (ii) and (iii) of Rule 501 and all other persons purchase on the same or better terms. If this 60% test is met, the issuer, in lieu of providing the information called for by paragraph (b)(2) of Rule 502 to all purchasers, may elect to provide individual non-accredited investors upon their written request with the same written information provided to such institutions and the same information as the issuer would be required to provide if only non-accredited investors were involved in the transaction. Consequently, a disclosure document would not be required to be furnished to non-accredited investors unless specifically requested in writing.

Based on the experience of its membership, the National Venture Capital Association ("Association") stated that non-accredited investors are often excluded in private financings due to the costs associated with the delivery of a disclosure document. Therefore, the Association suggested the "60% provision" which is premised on the theory that, where 60% or more of the purchasers are accredited with institutions, it may be appropriate to rely on such accredited investors, negotiating in their own interest, to assure the fairness of the transaction to the remaining investors so that delivery of a disclosure document need not be mandated, thereby reducing the cost of the offering. Further, the Association stated that, "as a practical matter, the non-accredited purchasers rely upon the judgment of the accredited purchaser, and the delivery of information does not

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[23] *See* Securities Act Release No. 4552 (November 6, 1962) (27 FR 11316).

[24] As with current rule 242, the definition of employee plan references to Rule 16b-3(d)(1) under the Exchange Act. However, the Commission intends to change this reference to the definition recently proposed in Rule 405(k), if adopted. *See* Securities Act Release No. 6333 (August 6, 1981).

[25] For example, an issuer makes the following sales: 1) a sale pursuant to Rule 505 on January 1, 1981; 2) a sale pursuant to an employee plan on April 15, 1981; and 3) a sale pursuant to Rule 505 on July 1, 1981. The sales pursuant to the employee plan would not destroy the safe harbor for the January and July sales. However, the employee plan sales and either of the sales pursuant to Rule 505 could be integrated if the criteria set forth in Securities Act Release No. 4552 are met.

allow this result." [26] Paragraph (b)(1)(ii) does provide, however, that the remaining purchasers may obtain on an individual basis, upon written request, the same disclosure that would have been furnished to them as if the "60% provision" were not utilized by the issuer. In addition, Rule 502(b)(2)(v) requires the issuer to inform purchasers at a reasonable time prior to purchase of their opportunity to obtain such information.

The 60% test would be particularly helpful in those situations where the issuer is certain that sufficient institutional interest in the offering will be present. However, where the extent of institutional interest is uncertain, this approach will be of reduced value since issuers will have to provide information to all purchasers regardless of the subsequent makeup of the investors to avoid the possibility of noncompliance with the informational delivery requirements of Rule 502(b)(1)(ii).

Because of the novel approach of the 60% provision, commentators are specifically requested to submit their views as to whether the investment interests of accredited institutions are sufficiently consistent with the investment interest of the remaining purchasers to assure adequate investor protections in the absence of a mandated disclosure document.

As stated above, in those instances where information must be furnished, the level of disclosure would, in the case of an issuer not subject to the reporting requirements of the Exchange Act, be based on the size of the offering. For offerings up to $500,000 where the issuer is relying on proposed Rule 504, no federal information requirements would be specified.[27] This proposal is consistent with the recommendations of a majority of the commentators who favored an increase in the Rule 240 ceiling without the establishment of mandated disclosure requirements. The Commission agrees with these views and therefore is not proposing to mandate specific disclosure requirements. Moreover, reliance on state regulation for offerings below $500,000 is consistent with the Commission's desire to coordinate the regulation of such offerings on the state and federal levels.[28]

With respect to offerings under Rules 505 or 506 by issuers who are not subject to the Exchange Act reporting requirements, the information requirement would be tiered according to the size of the offering. The Commission believes that, by structuring the informational requirements in this manner, it will inject a degree of simplicity into the exemptive scheme and eliminate any disparity among the various exemptions in those instances where aggregate offering prices are identical.

First, for offerings up to $1,500,000, the issuer would provide the same kind of information as that specified in Part II of Form 1A under Regulation A [29] to the extent material to an understanding of the issuer, its business, and the securities being offered. However, unlike the requirements under Regulation A, the issuer's financial statements for its most recent fiscal year must be audited in accordance with generally accepted accounting principles unless they cannot be obtained without undue burden or expense. If such audited financial statements are not available, only the issuer's balance sheet need be audited as of a date within 120 days of the commencement of the offering. This provision represents a modification of the current Rule 242 requirements which do not allow for the alternative of requiring only the balance sheet to be audited for offerings below $1.5 million.

Second, for offerings of $1,500,001 to $5,000,000, the issuer would provide the same kind of information as that specified in Part I of Form S–18 to the extent material to an understanding of the issuer, its business, and the securities being offered. However, only the issuer's financial statements for the most recent fiscal year must be audited. This requirement is identical to current Rule 242(f)(1)(i).

Finally, for offerings in excess of $5,000,000, the issuer would provide the same kind of information as would be required to be included in Part I of a registration statement filed under the Securities Act on a form which the issuer would be entitled to use, to the extent material to an understanding of the issuer, its business, and the securities being offered. This provision is similar to the information requirements provided by current Rule 146(e)(1)(ii)(*b*) except that audited financial statements must be provided. Although most commentators favored allowing the use of unaudited financial statements where audited statements are unavailable, the Commission believes that it is inconsistent with the concept of investor protection to allow issuers to offer securities in amounts in excess of $5,000,000 without audited financial statements. Further, the use of unaudited financial statements in such offers and sales is in consistent with the proposed disclosure provisions relating to offers and sales in lower amounts which, in most instances, would require the use of audited financial statements.

In those instances where the issuer is subject to the reporting requirements of Sections 13 to 15(d) of the Exchange Act, the informational provisions require the issuer to furnish its most recent annual report to shareholders, prepared in accordance with Rules 14a–3 and 14c–3, and the information contained in any definitive proxy statement required to be filed pursuant to Section 14A of the Exchange Act and in any reports or documents required to be filed by the issuer pursuant to Sections 13(a) or 15(d) of the Exchange Act and furnish to protective investors on request its most recent report on Form 10–K. If the issuer has not prepared an annual report to shareholders meeting the requirements of Rules 14a–3 or 14c–3 for its most recent fiscal year, Rule 502(b)(2)(ii)(B) specifies that the issuer shall furnish the information contained in a registration statement on Form S–1 under the Securities Act or on Form 10 under the Exchange Act or its annual report on Form 10–K, whichever is the most recent required to be filed, and the information contained in any subsequent documents or reports required to be filed pursuant to Section 13(a) or 15(d).

The requirement to use the issuer's most recent annual report to shareholders is consistent with the new registration procedures available to reporting companies described above. The information to be furnished if an annual report to shareholders has not been prepared is consistent with the requirements of current Rule 146.

In addition to the above information requirements, certain general provisions presently found in Rules 146 and 242 have been included and apply to all offerings in excess of $500,000. Subparagraph (b)(2)(iv) of proposed Rule 502 contains a provision currently found in Rules 146(e)(2) and 242(f)(2) which requires the issuer to provide an opportunity for the purchaser to ask questions and receive answers concerning the terms and conditions of the offering and provide, if available without unreasonable expense or effort, any additional information necessary to verify the information furnished

[26] Copies of the letters of comments have been placed in public file No. S7–867 and are available for inspection and copying.

[27] Offerings below $500,000 made pursuant to or relying on Rules 505 or 506 would of course have to comply with the informational requirements for offerings below $1.5 million.

[28] For further discussion of the federal-state regulation of offerings under $500,000, *see* discussion relating to proposed Rule 504, *infra*.

[29] New part II of Form 1A as adopted in Securities Act Release No. 6340 corresponds to former Schedule I of Regulation A. *See* n. 12. *supra*.

pursuant to this rule. Rule 502(b)(2)(v) would require the issuer, as currently set forth in Rule 242(f)(3), to furnish all non-accredited purchasers with a description of any written information obtained from the issuer in connection with the offering by any accredited person. Further, with respect to those instances where 60% of the offering is purchased by accredited investors as defined by paragraphs (a)(i), (ii) and (iii) of proposed Rule 501, the issuer would have to inform all non-accredited purchasers of their opportunity to obtain the same information as the issuer would have been required to provide if only non-accredited investors were involved in the transaction. Finally, the proposed rule would include the additional information requirements relating to business combinations currently found in Rule 146(f)(4).

3. *Limitation on Manner of Offering.* Proposed Rule 502(c) would prohibit the issuer and any person acting on its behalf (except as specifically provided in certain offerings pursuant to proposed Rule 504) from offering or selling securities by means of any form of general solicitation or general advertising. This is similar to the provision contained in Rule 146(c) except that the prohibition against seminars and meeting has been modified to reflect the elimination of the qualified offeree concept of Rule 146. Paragraph (c)(2) would now prohibit any seminar or meeting whose attendees have been invited by means of any general solicitation, mailing, advertisement, notice, or other communication published in any print or broadcast media.[30]

4. *Limitations on Resale.* The Commission is proposing to adopt the provisions regarding limitations on resales found in present Rule 242(g). These provisions would require the issuer to exercise reasonable care in assuring that each purchaser is acquiring the securities for his own account, that each purchaser is informed that the securities cannot be resold unless they are subsequently registered under the Securities Act or an exemption therefrom is available, and that a legend referring to the restrictions on transferability and sale of the securities is placed on each certificate or document. Rule 502(d) would apply to all limited offering exemptions, except as specifically provided in certain offerings pursuant to proposed Rule 504, and would delete the requirement currently found in Rule 146(h) regarding stop transfer instructions to the issuer's transfer agent. The Commission believes such instructions, while they should be given, should not be a condition to the availability of the rule in view of the requirement to appropriately legend the securities.

5. *Remuneration Paid for Solicitations or for Sales.* Proposed Rule 502(e) would provide that no commission or similar remuneration can be paid or given for soliciting prospective buyers in connection with sales of securities in reliance on this regulation unless such commission or similar transaction related remuneration is paid or given to a broker-dealer registered both under Section 15(b) of the Exchange Act and pursuant to applicable regulations in those states in which the securities are to be offered, or to a bank as defined in Section 3(a)(2) of the Securities Act, as permitted by law. The Commission believes the requirement with respect to broker-dealers will provide safeguards for investor protection since a registered broker-dealer, pursuant to its suitability obligations, must make a determination as to whether participation in the offering is appropriate for each investor. Further, this provision would, unlike current Rule 240(d), permit commission to be paid in connection with offers and sales of securities made in reliance on proposed Rule 504. This will allow professionals to provide needed technical assistance to small issuers who are often unsophisticated in the methods of raising capital.

Although this proposal imposes an additional requirement regarding the payment of commissions under proposed Rules 505 and 506, the Commission does not believe it will add any burdens to the issuer since in most instances persons soliciting prospective buyers or selling the securities of the issuer would be subject to broker-dealer registration provisions under applicable state and federal laws.[31]

D. Rule 503—Filing of Notice of Sales

The Commission is proposing to adopt one uniform noitice of sales for Regulation D and Section 4(6) offerings. The notice would request information similar to that presently contained in Form 242 [32] and Form 4(6) except that a new item has been added which calls for the issuer to disclose those states in which the offering is to be made. This new requirement will allow the Commission and the various states to assess their efforts in implementing a coordinated regulatory scheme for the small offering exemptions. In addition, the new form would require issuers to disclose, with respect to sales of securities to accredited investors, the extent to which such sales are made to accredited institutions. This will allow the Commission to determine the degree of institutional participants in exempt offerings and whether the new information requirements in those instances where 60 percent of the offering is purchased by accredited institutions are beneficial to small business. The new form will allow the issuer to check appropriate boxes on the facing page to indicate which exemptions are being used. In addition, the design of the form will remain the same as to allow the issuer generally to respond to questions by checking boxes or by filling in blanks. Finally, the undertaking by the issuer to furnish to the Commission the information provided to any non-accredited investor currently required by Rule 242(h)(2) will be retained for the sale of securities pursuant to proposed Rule 505. However, the undertaking has been modified to provide that such information also be furnished, upon written request, to any state regulatory authority having jurisdiction over the offering.

An important purpose of the notice, as stated in the release adopting Rule 242, is to collect empirical data which will provide a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. [33] Further, the proposed Form will allow the Commission to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses. For example, the expenses of the offering would be studied together with comparable data for registered offerings to determine to what extent, if any, the capital formation process under proposed Regulation D produces cost savings. Information about the number of purchasers and dollar amount of their

[30] The commission is aware that, pursuant to the exclusion from counting in Rule 146 for persons who purchase $150,000 of securities, many offerings claiming the exemption provided by the Rule have been sold to hundreds of purchasers. Similarly, pursuant to the accredited investor concept in Regulation D, offerings could theoretically be made to an unlimited number of accredited investors. The Commission cautions issuers, however, that depending on the actual circumstances, offerings made to such large numbers of purchasers may involve a violation of the prohibitions against general solicitation and general advertising.

[31] Proposed Rule 502(e) would not preclude an issuer from marketing its own securities through its officers, directors, or employees under circumstances where they would not be required to register as brokers or dealers under applicable state or federal law.

[32] Copies of current Form 242 can be obtained from the Commission and its regional offices.

[33] Securities Act Release No. 6180 (January 17, 1980)[45 FR 6362].

purchases by category will enable the Commission to determine whether the expanded concept of "accredited investor" is a useful one. The importance of collecting this information is evidenced by a recent study of Rule 242 prepared by the Directorate of Economic and Policy Analysis which was released by the Commission in November of 1980. [34] This study, which analyzed the characteristics of those issuers who offered securities pursuant to Rule 242 provided needed information in the Commission's consideration of proposed Regulation D.

The Commission recognizes that the proposed uniform notice increases the amount of information requested with respect to offers and sales under proposed Rule 506. However, the Commission believes that, for a limited period of time, information is needed to study the impact of the revisions of current Rule 146. It is anticipated that the proposed expanded notice requirement for Rule 506 offerings will be eliminated after a reasonable period for evaluation.

In addition to the proposed amendments to the Form, the filing requirements have been changed in two respects. First, in order to ease the burden on issuers, the Commission is proposing to extend the time of filing of the notice from 10 days to 30 days. Thus the issuer would have to make an initial filing no later than 30 days after the first sale is made in any issue offered in relaince on the Regulation and submit a final filing no later than 30 days after the completion date of the issue. Issuers would still have to file periodic updates every six months unitl a final notice is filed upon completion of the offering. It should be noted that, although the revised filing requirements do not require that the user also file a notice with the state(s) in which the offering is to be sold, it is anticipated that the Commission will routinely furnish copies of the notice forms to the appropriate state commissions.

Second, in order to obtain the notice of sales form on a timely basis, the provision contained in Rule 240(h)(2) has been eliminated. This provision provides that Rule 240 will be available for the first $100,000 of the securities sold by the issuer if the sales of such securities complied with all the conditions of Rule 240 other than the notice requirement. However, prior to any further sales in reliance on Rule 240, the issuer would have to file a notice of sales form covering the first sales. The Commission requests commentators to provide their views as to whether a similar provision should be provided for sales pursuant to proposed Rule 504, and whether the Commission should eliminate the requirement to file a notice of sales form for offerings below some *de minimis* amount. The Commission does not believe that the filing requirement should be removed in its entirety from the operation of proposed Rule 504. As with the other exemptive rules, information is needed concerning the use of proposed Rule 504 in order to assess its usefulness as a capital raising device. However, the Commission realizes that the full Form D notice requirement may impose an undue burden on offerings below some small amount such as $100,000.

Several commentators suggested that the forms required to be filed in connection with the exemptions should not be conditions precedent to the availability of the exemption in question. However, as indicated above, the information contained in the proposed form is of great value in monitoring the use of the exemption and in the Commission's continuing effort to improve the usefulness of the exemptive scheme. Therefore, in order to assure timely receipt of these forms, the Commission is proposing to keep the filing requirement as a condition precedent to the availability of an exemption. It should be noted however, that after a reasonable period of experience with Regulation D the Commission may reduce or modify the amount of information required in the notice or, as in the case of proposed Rule 506, eliminate the need to file such a notice.

E. Rule 504—Exemption for Limited Offers and Sales of Securities Not Exceeding $500,000

Proposed Rule 504, which would replace current Rule 240, provides an exemption from registration for limited offers and sales of securities not exceeding an aggregate amount of $500,000. Witnesses at the Small Business Hearings and numerous commentators agreed that $100,000, the current Rule 240 limit, often is an insufficient amount to be useful to even the smallest businesses in need of financing, and that an increase in the ceiling would not only assist financings during an enterprise's infancy but would also be valuable to a small business in securing expansion venture capital. The Commission agrees with these commentators and, therefore, proposed to increase the ceiling limitations to $500,000.

In calculating the aggregate offering price in reliance on the rule, proposed Rule 504 specifies that all sales within the preceding 12 months offered and sold (1) pursuant to this rule, Regulation A or proposed Rule 505; and (2) in violation of Section 5(a) of the Securities Act, shall be included in the aggregate ceiling limitation. The aggregation limitations proposed herein expand the current Rule 240 provision which requires that all sales effected without registration must be included in the aggregate amount. Under the current rule, nonconvertible notes or similar evidences of indebtedness representing a purchase money mortgage or issued to certain specified institutional investors, and securities sold to promoters, directors, executive officers or fulltime employees are excluded from the calculation of the aggregate amount provided, however, that such securities were sold in reliance on an exemption other than Rule 240. The Commission is proposing to eliminate the above exclusion, however, in view of the significant increase in the ceiling limitation and the expanded aggregation provision which includes only those securities offered in reliance on the proposed rule and any other Section 3(b) exemptions.

As in current Rule 240, the proposed rule does not mandate specific disclosure requirements. This is consistent with the opinions expressed by many commentators that there is a need for a *de minimis* exemption from federal regulation and that state "Blue Sky" requirements and the antifraud provisions of the federal securities laws would afford adequate protection. The exemption herein would not obviate the need to comply with any state requirements with respect to disclosure.

The proposed rule requires that all offers and sales of securities effected in reliance on the rule must be made in accordance with all of the terms and conditions of the exemption as well as the general conditions to be met as specified in proposed Rules 501 to 503. However, in an effort to achieve an added degree of uniformity between federal and state regulation throughout the entire exemptive scheme, the rule provides that Rule 502(c), relating to limitations on the manner of the offering, and Rule 502(d), relating to limitations on resale, shall not be applicable if offers and sales pursuant to the proposed rule are made exclusively in states which provide for the registration of such securities and require the delivery of a disclosure document. It appears that offerings of up to $500,000 made to an unlimited number of offerees would be required to be registered in a number of states. Issuers

[34] Rule 242: A Monitoring Report on the First Six Months of Its Use.

so registering under Blue Sky provisions would then have the ability to conduct a general solicitation sales effort and the securities sold would not be restricted. Absent the provision included in proposed Rule 501(a)(1) these issuers would not be able to claim the Rule 504 exemption.

It is the view of both the Commission and NASAA that in those instances where an offering is made in reliance on the proposed rule in states exercising appropriate regulatory control, and such securities are registered in accordance with applicable state law, adequate investor protections will be preserved through state regulation for offerings below $500,000. Accordingly, the Commission is proposing that, in offerings registered with each state in which the securities are to be offered that require the delivery of a disclosure document, the limitations on the manner of the offering and nature of the securities as prescribed by proposed Rules 502(c) and (d) will not be applicable.

The Commission is also proposing to eliminate the limitation on the number of beneficial owners as currently provided by paragraph (f) of Rule 240. In lieu thereof, the Commission intends to limit the availability of the rule to issuers that are not subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act. The Commission believes that, because of the limited amount of capital that can be raised under the proposed rule, the existing limitation regarding the number of beneficial owners is inconsistent with the proposition of a *de minimis* exemption. However, it is the Commission's intention that the proposed rule be used to facilitate the capital formation needs of the small start-up company seeking venture capital, and not seasoned issuers for which information is readily available by means of Exchange Act documents. Therefore, the Commission is proposing to restrict the availability of the exemption to issuers that are not subject to the periodic disclosure requirements of the Exchange Act.

Finally, the prohibition against the payment of commissions set forth in current Rule 240 has been eliminated to the extent that such commission may be paid to registered broker-dealers.

The Commission specifically invites comment on the proposed exemption described herein and the extent to which such exemption will enhance the ability of smaller businesses to enter the capital markets.

F. Rule 505—Exemptions for Limited Offers and Sales of Securities Not Exceeding $5,000,000

Proposed Rule 505 would replace current Rule 242 and make significant changes with respect to the operation of that exemption. First, the restrictions of availability contained in present Rule 242(a)(5) have been significantly amended. These restrictions have consistently followed the availability of Form S–18 since its disclosure requirements reference to Part I of Form S–18. The Commission in adopting Form S–18 noted its experimental nature and indicated that it would move cautiously in expanding its usage. However, the elimination of such issuer qualifications was unanimously supported by commentators who cited Congressional intent in enacting the Incentive Act to encourage the development of small business without unnecessary restrictions on the type of business conducted or the form in which the business is conducted.

Based on the comments received resulting from its prior concept release and the Commission's own experience to date in administering Form S–18, it is anticipated that proposals to broaden the availability of Form S–18 will be published in the near future. Accordingly, the Commission is proposing to expand the availability of Rule 242 to foreign issuers,[35] non-corporate issuers, and issuers engaged in significant oil and gas operations.

However, investment companies[36] and those issuers subject to certain disqualification provisions similar to those contained in current Rule 252(c), (d), (e), or (f) of Regulation A under the Securities Act would continue to be prohibited from using the exemption provided by proposed rule 505. In addition, the Commission is proposing to add to the disabilities contained in Rules 252(c), (d) and (e), the making of false filing with any state, the conviction of any felony involving fraud or deceit, and any state administrative cease and desist order for certain state securities violations. As proposed, there are no disqualifying limitations on issuers effecting transactions in reliance on proposed Rule 504. Commentators are requested to provide their views as to whether proposed Rule 504 should be available to issuers subject to such disqualifications. The Commission feels such a restriction may be appropriate in light of the significant increase in the offering aggregate amount and the lack of any specific disclosure requirements under that rule.

Finally, as discussed above, the Commission is proposing to limit the availability of proposed Rule 505 to those issuers who have not been subject to the reporting requirements of Sections 13 and 15(d) of the Exchange Act for 36 consecutive months preceding the offering in reliance on this rule. Based on a review of the Form 242 notice of sales forms filed since the adoption of Rule 242 in January 1980, approximately ten percent of the issuers using the rule have been subject to Exchange Act reporting requirements. Thus, it appears that the exemption currently provided by Rule 242 is utilized primarily by small unseasoned issuers for which the exemption was originally intended.

The second change in the proposed Rule 505 exemption would increase the limitation on the aggregate offering price to $5,000,000 in any 12 month period. This proposal was supported by most commentators who believed that the current six month interval for Rule 242 offerings was counter-productive when per offering costs are evaluated. The proposed rule would retain the requirement in current Rule 242(c) which provides that, in calculating the aggregate offering price in reliance on the rule, all sales within the preceding 12 months offered and sold in reliance on this rule, Regulation A, and proposed Rule 504 be included for purposes of determining the aggregate ceiling limitation. In addition, offers and sales of securities made in violation of section 5(a) of the Securities Act would be included in the calculation. Although such offers and sales are not included in current Rule 242(c), their inclusion in proposed Rule 505 is consistent with similar provisions contained in proposed Rule 504, Regulation A, and Form S–18. Further, in light of the simplified exemptive scheme contained in proposed Regulation D, the Commission believes it is appropriate to include such offers and sales for purposes of calculating the aggregate offering price under proposed Rule 505.

Finally, in view of the increase in the offering limit, the proposed Rule would delete the Rule 242 exclusion from the aggregation formula for securities of the issuer sold pursuant to Regulation A pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b–3 under the Exchange Act. The

[35] The Commission intends in the near future to propose a series of registration forms tailored to the special disclosure problems of foreign issuers. It is anticipated that revisions to Regulation D to incorporate applicable disclosure requirements will be proposed at that time.

[36] Investment Companies have available a special exemption pursuant to Regulation E [230.601 *et seq.*] which takes into account the uniqued regulatory aspects of such companies under the Investment Company Act.

aggregation provision proposed herein is consistent with a similar provision contained in proposed Rule 504.

The third change in proposed Rule 505 is the requirement contained in Rule 504 that the payment of sales commissions or similar remuneration can only be made to registered broker-dealers.

Finally, Proposed Rule 505 will retain the limitation on number of purchasers currently found in Rule 242(e). This will allow the issuer to sell its securities to an unlimited number of accredited investors and to 35 non-accredited investors. Although the aggregate offering amount has been substantially increased, the Commission believes the purchaser limitations should not be raised in order to preserve the private nature of the offering.

The Commission specifically invites comments on the proposed exemption described herein and the extent to which such an exemption provides a viable method of financing.

G. Rule 506—Exemption for Limited Offers and Sales of Securities Without Regard to Dollar Amount of Offering

Proposed Rule 506 would modify present Rule 146 in several respects. The most significant modification to Rule 146 is a proposal to eliminate the qualification requirements with respect to offerees. Many commentators have expressed the view that it is impossible to evaluate an offeree's qualifications without providing the offeree basic information concerning the offering. Moreover, participants in the Small Business Hearings believed that the test for offerees was complicated and difficult for a small business to observe, particularly in light of the danger of inadvertently making an offer while trying to elicit facts about an offeree's qualification and thereby losing the protection of Rule 146. It was maintained by these participants that eliminating the provisions for offeree qualifications would not result in a loss of protection to investors since an investor would still have to be qualified before purchasing the securities. In light of the comments received, the Commission is proposing to eliminate the requirement to determine the qualifications of each offeree. The Commission believes that the limitation as to the manner of the offering and the limitations as to disposition set forth in proposed Rule 502(c) and (d) are sufficient to assure that the offering is private in nature. However, as discussed below, the requirement that the issuer make a determination as to the purchaser's qualifications will be retained in modified form.

The Commission is proposing to retain for purposes of Rule 506 the requirements contained in current Rule 146 relating to number and nature of purchasers. However, such requirements would be modified in two respects. First, with regard to the number of purchasers, proposed Rule 506 would be identical to proposed Rule 505 in that the issuer would be allowed to sell its securities to an unlimited number of accredited investors and to 35 other persons meeting the qualifications discussed below. The second modification of the Rule 146 requirements concerns the nature of the purchasers. Rule 506(b)(1) as proposed would require the issuer to make a determination prior to any sale that each non-accredited purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment. This requirement differs from current Rule 146 in that the economic risk test set forth in paragraph (d)(2)(ii) of Rule 146 has been eliminated. Commentators believed that where the purchaser is represented by person(s) meeting the sophistication standards, given information substantially equivalent to a registration statement and fully appraised of restrictions regarding resale, it is inappropriate to make a separate judgment concerning the investor's ability to bear economic loss. The Commission agrees with these commentators and believes that the protections preserved in proposed Rule 506 are adequate to protect investors and, therefore, the economic risk test is not needed.

Proposed Rule 506 also amends current Rule 146(d) by incorporating the accredited investor in the rule. This approach is based on the presumption that accredited investors can fend for themselves without the protections afforded by registration and thereby satisfy the requirements of proposed Rule 506(b)(1) without a separate subjective determination by the issuer. The majority of commentators believed accredited investors as defined in proposed Rule 501(a) have the ability to fend for themselves in larger offerings contemplated under a Section 4(2) exemptive rule. The Commission agrees with these commentators and further would like to keep the accredited investor concept identical for purposes of proposed Rule 505 and 506. However, due to the novel approach of including the concept in a 4(2) exemptive rule, the Commission is requesting comment as to whether each category of accredited investor, specifically $100,000 purchasers and those persons who meet the net worth or income test, can sufficiently fend for themselves. Commentators are asked to focus upon those instances in which an offering pursuant to proposed Rule 506 is offered and sold solely to acredited investors and no information requirements are specified.

Finally, based on comment received, proposed Rule 506 would provide for the use of purchaser representatives. The requirements concerning purchaser representatives would be identical to those presently applicable to offeree representatives under Rule 146.

Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rule 215 and Regulation D proposed herein.

The analysis notes that Rule 215 and Regulation D are being proposed as a result of comments received in response to the Commission's inquiry relating to the effectiveness of the current Securities Act exemptive scheme and as a result of consultations with NASAA. The objective of proposed Rule 215 and Regulation D is to coordinate the various limited offering exemptions on both the State and federal levels, and to streamline the existing requirements applicable to private offers and sales of securities thereby creating a more coherent pattern of exemptive relief, particularly as it relates to the capital formation needs of small business.

The Commission recognizes the need to formulate compliance and reporting requirements that take into account the various costs involved in raising capital and recognizes the need to clarify and simplify the provisions currently contained in Rules 146, 240 and 242. In some cases proposed Regulation D will increase the burden to issuers currently using Rules 146, 240, and 242 as indicated in the Initial Regulatory Flexibility Analysis. Nevertheless, the Commission believes the increased benefits of Regulation D outweigh the increased burdens and, therefore, deems it appropriate to consider the proposals contained herein.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Paula L. Chester, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 500 North Capital Street, Washington, D.C. 20549 at (202) 272-2644.

Text of Proposed Rules

17 CFR Chapter II is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By removing § 230.146.
2. By removing § 230.240.
3. By removing § 230.242.
4. By adding a new § 230.215 to read as follows:

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 [15 U.S.C. 77b(15)(ii)] (the "Act") shall include the following persons:

(a) Any entity organized for the purpose of making investments in securities described in sections 55(a)(1) through (3) of the Investment Company Act of 1940 and which makes available significant managerial assistance as defined in section 2(a)(47) of that Act with respect to the issuers of such securities;

(b) Any college or university endowment fund with assets in excess of $25 million;

(c) Any director or executive officer of the issuer of the securities being offered or sold;

(d) Any person who purchases $100,000 or more of securities of the issuer per issue for any combination of (1) cash, (2) an obligation to pay which provides for full recourse against the purchaser of the securities and for discharge of the obligation within 60 days of the first issuance of the securities, (3) an unconditional obligation to pay to be discharged within two years of the first issuance of the securities and which is secured by an unconditional letter of credit issued by a bank as defined in section 3(a) (2) of the Act, or (4) the cancellation of any indebtedness owed by the issuer to the purchaser;

(e) Any natural person who, at the time of the offering, has a net worth in excess of $750,000; and

(f) Any natural person who had an adjusted gross income in excess of $100,000 as reported for Federal income tax purposes in his most recent tax return.

5. By adding a new Regulation D, §§ 230.501 to 230.506 to read as follows:

Regulation D—Rules governing the limited offer and sale of securities without registration under the Securities Act of 1933.

Preliminary Notes

1. The following rules relate to transactions exempted from the registration requirements of section 5 of the Securities Act of 1933 (the "Act") [15 U.S.C. 77a *et seq.*, as amended]. Such transactions are not exempt from the antifraud provisions of the federal securities laws or from the civil liability provisions of section 12(2) of the Act or other provisions of the federal securities laws. Pursuant to such provisions, issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under this regulation, in light of the circumstances under which it is furnished, not misleading.

2. Nothing in these rules obviates the need to comply with any applicable state law relating to the offer and sale of securities.

3. Reliance on any rule herein does not act as an election; the issuer can also claim the availability of any other applicable exemption.

4. These rules are available only to the issuer of the securities and are not available to affiliates or other persons for resales of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves. Except as provided by paragraph (a) of Rule 504, the securities acquired in a transaction effected in reliance on the rules contained herein are unregistered securities and have the same status as if they were acquired in a transaction pursuant to section 4(2) of the Act.

5. In view of the objective of the rules contained herein and the purposes and policies underlying the Act, the regulation is not available to any issuer with respect to any transaction which, although in technical compliance with the rules contained herein, is part of a plan or scheme to evade the registration provisions of the Act. In such cases registration pursuant to the Act is required.

§ 230.501 Definitions and terms used in §§ 230.501 to 230.506.

As used in §§ 230.501 to 230.506, the following terms shall have the meaning indicated:

(a) *Accredited investor.* The term "accredited investor" shall mean any person who the issuer and any person acting on the issuer's behalf with respect to such investors have reasonable grounds to believe and do believe, after reasonable inquiry, comes within any of the following categories at the time of the sale of the securities of the issuer pursuant to §§ 230.505 or 230.506:

(1) Any bank as defined in section 3(a)(2) of the Act whether acting in its individual or fiduciary capacity; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 ("Investment Company Act") or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser;

(2) Any entity organized for the purpose of making investments in securities described in sections 55(a)(1) through (3) of the Investment Company Act of 1940 and which makes available significant managerial assistance as defined in sections 2(a)(47) of that Act with respect to the issuers of such securities;

(3) Any college or university endowment fund with assets in excess of $25 million;

(4) Any director or executive officer of the issuer of the securities being offered or sold;

(5) Any person who purchases $100,000 or more of securities of the issuer per issue for any combination of (i) cash, (ii) an obligation to pay which provides for full recourse against the purchaser of the securities and for discharge of the obligation within 60 days of the first issuance of the securities, (iii) an unconditional obligation to pay to be discharged within two years of the first issuance of the securities and which is secured by an unconditional letter of credit issued by a bank as defined in section 3(a)(2) of the Act, or (iv) the cancellation of any indebtedness owed by the issuer to the purchaser;

(6) Any natural person whose individual net worth at the time of the offering is in excess of $750,000; and

(7) Any natural person who had an individual adjusted gross income in excess of $100,000 as reported for Federal income tax purposes in his most recent tax return.

(b) *Affiliate.* The term "affiliate" of a person shall mean a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with such persons.

(c) *Business Combinations.* The term "business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Act [17 CFR 230.145] and any transaction involving the acquisition by one issuer, in exchange solely for all or a part of its own or its parent's voting stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(d) *Calculation of number of purchasers.* The following shall apply in calculating the number of purchasers under § 230.505(b) and § 230.506(b)

(1) For purposes of computing the number of purchasers only, the following purchasers shall be excluded:

(i) Any relative, spouse, or relative of the spouse of a purchaser who has the same home as the purchaser;

(ii) Any trust or estate in which a purchaser or any of the persons related to him as specified in paragraphs (d)(1)(i) or (d)(1)(iii) of this section collectively have 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser or any of the persons related to him as specified in paragraphs (d)(1)(i) or (d)(1)(ii) of this section collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(2) There shall be counted as one purchaser any corporation or other organization except that, if such entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser for all provisions of this rule.

Note.—The issuer must satisfy all the other provisions of this regulation with respect to all purchasers whether or not they are included in computing the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered to be the "purchasers" for purposes of the rule regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.

(e) *Calculation of aggregate offering price.* The aggregate offering price shall be calculated including all consideration received for the issuance of securities of the issuer, including cash, services, property, notes, cancellation of debt, or other consideration. Where securities which have no determinable market value are offered in exchange for outstanding securities, claims, property, or services, the aggregate offering price thereof shall be computed at the public offering price of securities of the same class for cash, or if no cash offering is to be made, then upon the basis of the value of the securities, claims, property, or services to be received in exchange, as established by bona fide sales made within a reasonable time, or in the absence of such sales, upon the basis of the fair value of the securities, claims, property, or services to be received in exchange as determined by some accepted standard.

(f) *Executive officer.* The term "executive officer" shall mean the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy-making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy functions for the issuer.

(g) *Issuer.* The definition of the term "issuer" in section 2(4) of the Act shall apply, *Provided,* That, notwithstanding that definition, in the case of a proceeding under the Bankruptcy Act, the trustee, receiver, or debtor in possession shall be deemed to be the issuer in an offering for purposes of a plan of reorganization or arrangement, if the securities offered are to be issued pursuant to the plan, whether or not like securities are offered under the plan in exchange for securities of, or claims against, the debtor.

(h) *Predecessor.* A "predecessor" of a issuer shall mean (1) a person the major portion of whose assets has been acquired directly or indirectly by the issuer or (2) a person from whom the issuer acquired directly or indirectly the major portion of its assets.

(i) *Purchaser representative.* The term "purchaser representative" shall mean any person or persons, each of whom the issuer and any person acting on the issuer's behalf with respect to such person or persons, after making reasonable inquiry, have reasonable grounds to believe and believe satisfies all of the following conditions:

(1) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securites or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) Related to such purchaser representative by blood, marriage or adoption, no more remotely than as first cousin;

(ii) Any trust or estate in which such purchaser representative or any persons related to him as specified in paragraphs (i)(1)(i) or (i)(1)(iii) of this section collectively have 100 percent of the beneficial interest (excluding contingent interests) or of which any such purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) Any corporation or other organization in which such purchaser representative or any persons related to him as specified in paragraphs (i)(1)(i) or (i)(1)(ii) of this section collectively are the beneficial owners of 100 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(2) Has such knowledge and experience in financial and business matters that he, either alone or together with other purchaser representatives of the purchaser, is capable of evaluating the merits nd risks of the prospective investment;

(3) Is acknowledged by the purchaser, in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(4) Discloses to the purchaser in writing, prior to the acknowledgement specified in paragraph (i)(3) of this section, any material relationship between such person or its affiliates and the issuer or its affiliates which then exist or is mutually understood to be contemplated or which has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1.—Persons acting as purchaser representatives should consider the applicability of the registration and anti-fraud provisions relating to brokers and dealers under the Securities Exchange Act of 1934 ("Exchange Act") and relating to investment advisers under the Investment Advisers Act of 1940.

Note 2.—The acknowledgement required by paragraph (i)(3) of this section and the disclosure required by paragraph (i)(4) of this section must be made with specific reference to each prospective investment. Advance blanket acknowledgement, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3.—Disclosure of any material relationships between the purchaser representative or its affiliates and the issuer or its affiliates does not relieve the purchaser representative of its obligation to act in the interest of the purchaser.

(j) *Securities of the issuer.* The term "securities of the issuer" shall mean:

(1) All securities issued by an issuer;

(2) All securities issued by any predecessor of an issuer; and

(3) All securities issued by an affiliate of an issuer which was organized or became such an affiliate within the preceding twelve months, *Provided, however,* That any securities of an issuer who may be an affiliate of another issuer solely by virtue of a common affiliation with a business development company as defined in section 2(a)(48) of the Investment Company Act or with any entity described in § 230.501(a)(2), shall not be

deemed to be the "securities of an issuer" for purposes of this Regulation.

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made pursuant to §§ 230.504 to 230.506:

(a) *Integration.* All sales which are part of the same issue must meet all of the conditions of the rules contained in this regulation. For purposes of identifying which securities constitute a single issue, sales of securities and offers in connection therewith occurring more than six months prior to the commencement of an issue of securities pursuant to this regulation and sales of securities and offers in connection therewith occurring at any time after six months from the completion date of the issue pursuant to this regulation shall not be considered part of the same issue so long as there are during neither of said six-month periods any offers or sales of securities by or for the issuer of the same or similar class as those offered or sold pursuant to this regulation other than offers or sales of securities pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b–3 under the Exchange Act [17 CFR 240.16b–3] which meets the conditions in paragraphs (a) through (c) of that rule.

Note.—The term "issue" is not defined in the Act or in the Regulation. In the event that the issuer offers or sells securities as to which the safe harbor described in paragraph (a) of this section is unavailable, the determination as to whether separate sales of securities are part of the same issue (*i.e.*, are deemed to be "integrated") depends on the particular facts and circumstances. The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under sections 3(b), 4(2) and 4(6) of the Act:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(b) *Information requirements.*

(1) *When information must be furnished.*

(i) If the issuer sells an issue of securities either pursuant to § 230.504 or only to accredited persons, this rule does not require that specific information must be furnished to purchasers.

(ii) In connection with an offering of securities pursuant to §§ 230.505 or 230.506, if the issuer sells an issue of securities only to non-accredited persons, or to both non-accredited and accredited persons, the issuer must furnish the information specified in paragraph (b)(2) of this section to all purchasers during the course of such offering and prior to sale. However, if 60% or more of the total offering is purchased by one or more institutions as defined by paragraphs (a)(1), (2), and (3) of § 230.501 and all other persons purchase on the same or better terms, the issuer, in lieu of providing the information called for by paragraph (b)(2) to all purchasers, may elect to provide to individual non-accredited investors upon written request the same written information provided to such institutions and the information required by paragraph (b)(2).

(2) *Type of information to be furnished.*

(i) If the issuer is not subject to the reporting requirements of section 13 or section 15(d) of the Exchange Act [15 U.S.C. 78m and 78o(d)] the following information must be furnished to purchasers during the course of the offering and prior to sale:

(A) *Offerings up to $1,500,000.* The same kind of information as that specified in Part II of Form 1A of Regulation A, to the extent material to an understanding of the issuer, its business, and the securities being offered; *Provided, however,* That financial statements for its most recent fiscal year prepared in accordance with generally accepted accounting principles and certified to by an independent public accountant or certified public accountant shall be furnished if obtainable without unreasonable effort or expense and, if not, the issuer's balance sheet shall be audited as of a date within 120 days of the commencement of the offering.

(B) *Offerings of $1,500,001 to $5,000,000.* The same kind of information as that specified in Part I of Form S–18, to the extent material to an understanding of the issuer, its business, and the securities being offered; *Provided, however,* That only the financial statements for the issuer's most recent fiscal year must be certified by an independent public accountant or a certified public accountant.

(C) *Offerings over $5,000,000.* The same information as would be required to be included in a registration statement filed under the Act on the form which the issuer would be entitled to use, to the extent material to an understanding of the issuer, its business, and the securities being offered.

(ii) If the issuer is subject to the reporting requirements of sections 13 or 15(d) of the Exchange Act the following information must be furnished during the course of the offering and prior to sale:

(A) The issuer's annual report to shareholders for the most recent fiscal year, which meets the requirements of §§ 240.14a–3 or 240.14c–3 under the Exchange Act, the information contained in any definitive proxy statement required to be filed pursuant to section 14 of the Exchange Act and in any reports or documents required to be filed by the issuer pursuant to sections 13(a) or 15(d) of the Exchange Act since the distribution of such annual report, and, if requested in writing, a copy of its most recent Form 10–K.

(B) If the issuer has not prepared an annual report to shareholders for the most recent fiscal year meeting the requirements of §§ 240.14a–3 or 240.14c–3, the issuer shall provide in lieu of the information specified in paragraph (A) the information contained in an annual report required to be filed on Form 10–K under the Exchange Act or in a registration statement on Form S–1 under the Act or under Form 10 under the Exchange Act, whichever filing is the most recent required to filed, and the information contained in any reports or documents required to be filed by the issuer pursuant to sections 13(a) or 15(d) of the Exchange Act since the filing of such annual report or registration statement.

(C) In addition to information specified in paragraphs (A) or (B), the issuer shall provide a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs which are not disclosed in the documents furnished;

(iii) Notwithstanding paragraphs (b)(2)(i)(C) and (b)(2)(ii)(A)–(B) of this section, exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts thereof incorporated by reference in a Form 10–K report, need not be furnished to each purchaser if the contents of the exhibits are identified and such exhibits are made available to the purchaser prior to sale.

(iv) The issuer also shall make available to each purchaser at a reasonable time prior to the purchase of securities in a transaction pursuant to §§ 230.505 or 230.506 the opportunity to ask questions of, and receive answers from, the issuer or any person acting on its behalf concerning the terms and conditions of the offering and to obtain any additional information, to the extent that the issuer possesses such information or can acquire it without

unreasonable effort or expense, necessary to verify the accuracy of the information obtained pursuant to paragraphs (b)(2)(i) and (ii).

(v) At a reasonable time prior to the purchase of securities by any non-accredited person in a transaction pursuant to §§ 230.505 or 230.506 the issuer shall: (A) furnish such purchaser a brief description in writing of any written information obtained from the issuer in connection with the offering by any accredited person; and (B) inform such purchaser, in those instances where 60% or more of the offering is purchased by accredited investors as defined by paragraph (a)(1), (2) and (3) of § 230.501, of his opportunity to obtain the same information as the issuer would be required to provide if only non-accredited investors were involved in the transaction. The issuer shall furnish any portion or all of such information to such non-accredited person upon his written request if made prior to the date of his purchase.

(vi) With respect to business combinations, in addition to information required by this paragraph, the issuer shall provide, in writing, to each purchaser at the time the plan is submitted to security holders or, in the case of an exchange, during the course of the transaction and prior to the sale, information about any terms or arrangements of the proposed transaction relating to any security holder that are not identical to those related to all other security holders.

(c) *Limitation on manner of offering.* Except with respect to certain offers and sales made pursuant to § 230.504(a), neither the issuer nor any person acting on its behalf shall offer or sell the securities by means of any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by means of any general solicitation, mailing, advertisement, article, notice or other communication published in any of the medias described in paragraph (c)(1).

(d) *Limitations on resale.* Except with respect to certain offers and sales made pursuant to § 230.504(a), in determining the availability of an exemption from registration for resale of securities acquired in a transaction pursuant to this regulation, such securities shall be deemed to have the same status as if they had been acquired in a transaction pursuant to section 4(2) of the Act and cannot be resold without registration under the Act or exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care shall include, but not necessarily be limited to:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his own account or on behalf of other persons;

(2) Disclosing to each purchaser in writing prior to sale that the securities have not been registered under the Act and, therefore, cannot be sold unless they are subsequently registered under the Act or an exemption from such registration is available; and

(3) Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

(e) *Remuneration paid for solicitation or for sales.* No commission or similar remuneration shall be paid or given directly or indirectly for soliciting any prospective buyer or in connection with sales of the securities in reliance on this regulation unless such commission or similar transaction related remuneration is paid or given to a broker-dealer who is registered both under section 15(b) of the Exchange Act and pursuant to applicable regulations in those states in which the securities are to be offered or to a bank as such term is defined in section 3(a)(2) of the Act, as permitted by law.

§ 230.503 Filing of notice of sales.

(a) The issuer shall file with the Commission five copies of a notice on Form D [17 CFR 239.500]:

(1) No later than 30 days after the first sale of securities in any issue is made in reliance on this regulation;

(2) No later than 30 days after the completion date of the offering of such issues; *Provided, however,* That only one notice need be filed for purposes of paragraphs (a)(1) and (2) under this rule if the offering of the issue is completed within the 30 day period described in paragraph (a)(1) and the notice is filed no later than at the conclusion of that period but subsequent to the completion of the offering of the issue; and

(3) Every six months after the first sale of securities in the issue is made in reliance on this regulation unless the final notice required by paragraph (a)(2) of this rule has been filed.

(b) Every notice on Form D shall be signed by a duly authorized officer of the issuer.

(c) If sales are made pursuant to § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission or to the securities administrator in any state which has jurisdiction over the offering, upon the written request of the staff, the information furnished by the issuer to any non-accredited person pursuant to paragraph (b)(2) of Rule 502.

(d) If more than one notice is required to be filed pursuant to paragraph (a) of this rule as to any issue of securities offered in reliance thereon, notices other than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

(e) A notice on Form D shall be deemed to be filed with the Commission for purposes of paragraph (a) of this rule:

(1) As of the date on which it is received at the Commission's principal office in Washington, D.C.; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

§ 230.504 Exemption for limited offers and sales of securities not exceeding $500,000.

(a) Offers and sales of securities made in accordance with all the terms and conditions of this rule and §§ 230.501 to 230.503 by an issuer who is not subject to the reporting requirements of sections 13 or 15(d) of the Exchange Act and who is not an investment company shall be exempt from the provisions of section 5 of the Act; *Provided, however,* That the provisions of § 230.502(c) and (d) shall not be applicable to offers and sales of securities pursuant to this rule which are made exclusively in states which provide for the registration of such securities and require the delivery of a disclosure document prior to the time of sale and such securities are so registered in such states in accordance with the applicable rules.

(b) The aggregate offering price of an issue of securities of the issuer, as defined in paragraph (e) of § 230.501, conducted in reliance on this rule shall not exceed $500,000, less the aggregate gross proceeds from any securities sold: (1) pursuant to this rule, § 230.505, or §§ 230.251–230.264; and (2) in violation of section 5(a) of the Act in the twelve months preceding the commencement

and during the offering of the issue of securities pursuant to this rule.

Note 1.—The calculation of the aggregate offering price may be illustrated as follows. If an issuer sold $200,000 of its securities on June 1, 1981, in reliance on this rule, and an additional $100,000 on September 1, 1981, the issuer would be permitted to sell only $200,000 more until June 1, 1982, since until that date the issuer must count both prior sales toward the $500,000 limit. However if the issuer made its third sale on June 1, 1982, the issuer could then sell $400,000 of its securities since the June 1, 1981, sale would not be within the preceding twelve months.

Note 2.—If an issuer sold $100,000 of its securities on June 1, 1981, in reliance on this rule and an additional $4,500,000 on December 1, 1981 in reliance on § 230.505 of this regulation, the issuer could not sell any of its securities pursuant to this rule until December 1, 1982, since the issuer must count the December 1, 1981 sale toward the $500,000 within the preceding twelve months limit.

Note 3.—If a transaction relying on this rule fails to meet the limitation on the aggregate offering price, it does not affect the availability of the rule for the other transactions considered in applying such limitation. For example, if the issuer in note 1 made its third sale on May 31, 1982, in the amount of $250,000, the rule would not be available for that sale; but the exemption for the prior two sales would be unaffected.

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

(a) *Conditions to be met.*

(1) Offers and sales of securities made in accordance with all the terms and conditions of this rule and §§ 230.501 to 230.503 by an issuer shall be exempt from the provisions of Section 5 of the Act; *Provided, however,* that the issuer has not been subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 for 36 months preceding the offering in reliance on this rule, and is not an investment company.

(2) No exemption under this rule shall be available for the securities of any issuer if such issuer, any of its predecessors or any affiliated issuer—

(i) Has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the act, or is the subject of any refusal order or stop order entered pursuant to state or federal law within five years prior to the commencement of the offering;

(ii) Is subject to any pending proceeding under § 230.261 of Regulation A or any similar rule adopted under section 3(b) of the act, or to an order entered thereunder within five years prior to the commencement of the offering;

(iii) Has been convicted within five years prior to the commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of any false filing with the Commission or any state or any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(iv) Is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the commencement of the offering permanently retraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission or any state;

(v) Is subject to a state administrative cease and desist order for violation of state securities laws entered within five years prior to the commencement of the offering; or

(vi) Is subject to a Unied States Postal Service false representation order entered under section 3005 of title 39, United States Code, within five years prior to the commencement of the offering; or is subject to a temporary restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.

This paragraph shall not apply to any order, judgment, or decree contemplated by paragraphs (1) through (5) hereunder because of its entry against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time the order, judgment, or decree was entered against it.

(3) No exemption under this rule shall be available for the securities of any issuer, if any of its directors, officers, general partners, or beneficial owners of ten percent or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), any of its promoters presently connected with it in any capacity, any person which has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in any issue offered in reliance on this rule, or any partner, director or officer of any such person—

(i) Has been convicted within ten years prior to the commencement of the offering of any felony or misdeameanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission or any state, arising out of the conduct of the business of an underwriter, broker dealer, municipal securities dealer, or ivnestment adviser or any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

(ii) Is subject to any order, judgment, or decree of any court of competent jurisdiction, temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five years prior to the commencement of the offering permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission or any state, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(iii) Is subject to a state administrative cease and desist order for violation of state securities laws entered within five years prior to the commencement of the offering;

(iv) Is subject to an order of the Commission entered pursuant to section 15(b), 15B(c) of the Securities Exchange Act of 1934; or is subject to an order of the Commission entered pursuant to section 203 (e) or (f) of the Investment Advisers Act of 1940;

(v) Is suspended or expelled from membership in, or suspended or barred from association with a member of an exchange registered as a national securities exchange pursuant to section 6 of the Securities Exchange Act of 1934, an association registered as a national securities association under section 15A of the Securities Exchange of 1934, or a Canadian securities exchange or association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(vi) Is subject to a United States Postal Service false representation order under section 3005 of title 39, United States Code, within five years prior to the commencement of the offering; or is

subject to a restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.

(4) No exemption under this rule shall be available for the securities of any issuer if any person which has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in any issue offered in reliance on this rule was, or was named as, an underwriter of any securities:

(i) Covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the act, or is the subject of any refusal order or stop order entered pursuant to State or Federal law within five years prior to the commencement of the offering; or

(ii) Covered by any filing which is subject to any pending proceeding under § 230.261 of Regulation A or any similar rule adopted under section 3(b) of the act, or to an order entered thereunder within five years prior to the commencement of the offering.

(5) No exemption under this rule shall be available for the securities of an issuer which is subject to the requirements of sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, unless such issuer has filed all reports required by those sections to be filed during the 12 calendar months preceding the first sale of securities in any issue in reliance on this rule.

(6) Paragraph (2), (3), (4) or (5) of this rule shall not apply to the securities of any issuer if the Commission and the relevant state securities administrator determine, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination shall be without prejudice to any other action in any other proceeding or matter with respect to the issuer or any other person.

(b) The aggregate offering price of an issue of securities of the issuer as defined in paragraph (e) of § 230.501 in reliance on this rule shall not exceed $5,000,000, less the aggregate gross proceeds from all securities sold: (1) pursuant to this rule, § 230.504 or §§ 230.251–230.264; and (2) in violation of section 5(a) of the Act in the twelve months preceding the commencement and during the offering of the issuer of securities pursuant to this rule.

Note 1: The calculation of the aggregate offering price may be illustrated as follows. If an issuer sold $2,000,000 of its securities on June 1, 1981, in reliance on this rule, and an additional $1,000,000 on September 1, 1981, the issuer would be permitted to sell only $2,000,000 more until June 1, 1982, since until that date the issuer must count both prior sales toward the $5,000,00 limit. However, if the issuer made its third sale on June 1, 1982, the issuer could sell $4,000,000 of its securities since the June 1, 1981 sale would not be within the preceding twelve months.

Note 2: If an issuer sold $500,000 of its securities on June 1, 1981 in reliance on § 230.504 of this regulation and an additional $4,500,000 on December 1, 1981, in reliance on this rule, the issuer could not sell any of its securities pursuant to this rule until June 1, 1982. At such time it could sell an additional $500,000 of its securities.

(c) *Limitation on number of purchasers.* The issuer shall have reasonable grounds to believe and, after making reasonable inquiry, shall believe, that there are not more than 35 purchasers of each issue of the securities of the issuer from the issuer pursuant to this rule.

Note: See paragraph (a) of § 230.502 as to what may or may not constitute an issuer pursuant to this rule.

230.506 Exemption for limited offers and sales of securities without regard to dollar amount of offering.

(a) *Conditions to be met.* Transactions by an issuer which do not satisfy all of the conditions of this rule shall not raise any presumption that the exemption provided by section 4(2) of the Act is not available for such transactoins. Issuers wanting to rely on the section 4(2) exemption may do so by complying with administrative and judicial interpretations in effect at the time of the transactions. Attempted compliance with this rule does not act as an election; the issuer can also claim the availability of Section 4(2) outside the rule.

(b) *Number and nature of purchasers.* The issuer shall have reasonable grounds to believe and, after making reasonable inquiry, shall believe, immediately prior to making any sale, that there are no more than 35 purchasers of each issue of the securities of the issue pursuant to this rule and with regard to each non-accredited purchaser obligated to purchase securities:

(1) That each such purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment, or

(2) With respect to business combinations, the issuer and any person acting on its behalf, after making reasonable inquiry, shall have reasonable grounds to believe, and shall believe, at the time that any plan for a business combination is submitted to security holders for their approval, or in the case of an exchange, immediately prior to the sale, that each purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

Note: See paragraph (a) of § 230.502 as to what may or may not constitute an issue pursuant to this rule.

(c) *Special requirement concerning purchaser representatives.* The issuer or any person acting on its behalf shall disclose to each purchaser in writing, prior to sale, any material relationship between his purchaser representive(s) or its affiliates and the issuer or its affiliates which then exists or mutually is understood to be contemplated or which has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. By removing § 239.146.

7. By removing § 239.240.

8. By removing § 239.242.

9. By removing § 239.246.

10. By adding a new § 239.500 to read as follows:

239.500 Form D, notice of sales of securities pursuant to Regulation D and section 4(6) of the Securities Act of 1933.

(a) Five copies of a notice on this form shall be filed with the Commission:

(1) No later than 30 days after the first sale of securities in any issue is made in reliance on Regulation D §§ 230.501–230.506 of this chapter);

(2) No later than 30 days after the completion date of the offering of such isue; *Provided, however,* That only one notice need by filed for purposes of paragraphs (a)(1) and (2) under this rule if the offering of the issue is completed within the 30 day period described in paragraph (a)(1) and the notice is filed no later than at the conclusion of that period but subsequent to the completion of the offering of the issue; and

(3) Every six months after the first sale of securities in the issue is made in reliance on this regulation unless the final notice required by paragraph (a)(2) of this rule has been filed.

(b) Every notice on form D shall be signed by a duly authorized officer of the issuer.

(c) If more than one notice is required to be filed pursuant to paragraph (a) of this rule as to any issue of securities offered in reliance thereon, notices other

than the original notice need only report the information required by Part C and any material change in the facts from those set forth in Parts A and B of the original notice.

(d) A notice on Form D shall be deemed to be filed with the Commission for purposes of paragraph (a) of this rule:

(1) As of the date on which it is received at the Commission's principal office in Washington, D.C.; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

Statutory Authority

The foregoing amendments are proposed pursuant to Section 2(15), 3(b), 4(2), 19(a) and 19(c)(3) of the Securities Act [15 U.S.C. 77b(15), 77c(b), 77d(2), 77s(a) and 77s(c)(3))].

(Secs. 2(15), 3(b), 4(2), 19(a), 19(c)(3), 48 Stat. 75, 77, 85; sec. 209, 48 Stat. 908; C.122, 59 Stat. 167; sec. 12, 78 Stat. 580; Pub. L. 91-565, 84 Stat. 1480; sec. 308(a)(2), 90 Stat. 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; secs. 301, 505, 94 Stat. 2291, 2292, 2294; 15 U.S.C. 77b(15), 77c(b), 77d(2), 77s(a), 77s(c)(3).)

By the Commission.

George A. Fitzsimmons,

Secretary.

August 7, 1981.

BILLING CODE 8010-01-M

APPENDIX A:[1] COMPARATIVE CHART OF SECURITIES ACT LIMITED OFFERING EXEMPTIONS

OPERATION OF EXISTING RULES

OPERATION OF PROPOSED RULES

Comparison Item	Current Rule 240 Proposed Rule 504	Current Rule 242 Proposed Rule 505	Current Rule 146 Proposed Rule 506	Section 4(6) (No change)
Aggregate price Limitation	$100,000 $500,000	$2,000,000 (6 Mos.) $5,000,000 (12 Mos.)	unlimited No change	$5,000,000
Number of Investors	100 (total shareholders) Unlimited	35 plus unlimited accredited 35 plus unlimited accredited	35 plus those purchasing in excess of $150,000	Unlimited accredited only
Investor qualifications	None required None required	Accredited or none required Accredited or none required	offeree and purchaser must be sophisticated or wealthy (with representative Sophisticated (alone or with representative) accredited presumed to be qualified	Accredited
Commissions	prohibited	permitted	permitted	permitted
	permitted provided that such commission or similar remuneration is paid to a broker-dealer registered both under the Exchange Act and each state or jurisdiction in which the securities are to be sold or a bank			
limitations on Resale	restricted restricted, unless registered in states that require the delivery of a disclosure document.	restricted No change	restricted	restricted

Comparison Item	Current Rule 240 Proposed Rule 504	Current Rule 242 Proposed Rule 505	Current Rule 146 Proposed Rule 506	OPERATION OF EXISTING RULES OPERATION OF PROPOSED RULES Section 4(6) (No change)
Information Requirements	No information specified	(1) Accredited: No specific requirements if purchased solely to accredited. If both accredited and non-accredited involved, all purchasers to be furnished information required if only non-accredited involved. (2) Non-accredited purchasers: (a) Reporting companies - most recent annual report, definitive proxy statements and recent periodic reports. (b) Non-Reporting Companies - info required by Part I of Form S-18 to the extent material with 1 year audited financials	Must furnish (unless offeree has access via economic bargaining power): (1) Below $1,500,000 info may be limited to Schedule I Reg. A info. (2) other offerings - (a) reporting companies-recent Form S-1 or Form 10, definitive proxy statement and recent periodic reports. (b) Non-reporting companies - info that be required to be included in registration statement on form which issuer would be entitled to use.	No information specified
	no change	(1) Accredited Same as current Rule 242 (2) Non-accredited (a) Reporting Companies: Most recent annual report to shareholders which meets requirements of Rule 14a-3, all subsequent reports and proxies, and undertaking to furnish Form 10-K; if annual report to shareholders not available, substitute most recent of Form S-1, Form 10-K, and Form 10.		

OPERATION OF EXISTING RULES

OPERATION OF PROPOSED RULES

Comparison Item	Current Rule 240 Proposed Rule 504	Current Rule 242 Proposed Rule 505	Current Rule 146 Proposed Rule 506	Section 4(6) (No change)
Information Requirements (cont'd)		(cont'd) (b) Non-reporting companies $500,001 - $1,000,000 - information required by Part II of Form 1-A under Regulation A except 1 year audited financials if obtainable without undue burden or expense; if not balance sheet only must be audited. $1,500,001 - $5,000,000 - information required by Part 1 of Form S-18 to extent material. Over $5,000,000 - info that would be required to be included in registration statement on form which issuer would be entitled to use. If 60% or more of offering is purchased by accredited institutional investors and all others purchase on same or better terms, all other purchasers may receive info received by institutions if requested in writing, as well as info they would be entitled if only non-accredited involved.		
Report of Sales	required as condition of rule, except for first offerings under rule. Form 240	required as a condition of Rule. Form 242	required as a condition of Rule. Form 146	required as condition of exemption Form 4(6)

Required as condition of Rules
Form D

Comparison Item	OPERATION OF EXISTING RULES Current Rule 240 OPERATION OF PROPOSED RULES Proposed Rule 504	Current Rule 242 Proposed Rule 505	Current Rule 146 Proposed Rule 506	Section 4(6) (No change)
Issuer qualifications	Any company having more than 100 shareholders at completion of offering is prohibited. No reporting companies.	Limited to domestic or Canadian corporate issuers; limited partnerships, investment companies and oil and gas companies prohibited. investment companies and issuers subject to Exchange Act for 36 consecutive months prohibited.	None no change	None
Manner of offering	no general solicitation permitted no general solicitation unless registered in state that requires the delivery of a disclosure document	No general solicitation permitted no change		no general solicitation permitted

1. Appendix A will not be carried in the Code of Federal Regulations.

[FR Doc. 81-23949 Filed 8-17-81; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 81N-0082]

Neomycin Sulfate Antiperspirants and Deodorants; Termination of Postponement of Effective Date of Final Rule Revoking Certification Provisions

AGENCY: Food and Drug Administration.

ACTION: Termination of Postponement of Effective Date.

SUMMARY: The Food and Drug Administration (FDA) terminates the postponement of the effective date of a final rule which revoked provisions for the certification of antiperspirants and deodorants containing neomycin sulfate. The effective date had been postponed pending review of objections and a request for hearing which have now been withdrawn.

EFFECTIVE DATE: The revocation of 21 CFR 444.42b, 444.542k, 444.542l, and 444.542m is effective September 17, 1981.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 5, 1972 (37 FR 25820, DESI 11048), FDA issued an order to revoke certain provisions of Part 148i (21 CFR 148i.30, 148i.30a, 148i.30b, and 148i.31, recodified as 21 CFR 444.542k, 444.542l, 444.542m, and 444.42b) which provided for certification of topical antiperspirants and deodorants containing aluminum chlorohydroxide complex in combination with neomycin sulfate and certification of neomycin sulfate (commercial grade). The basis for the order was an unfavorable benefit/risk assessment attributed to these products. The following products were certifiable under the regulations:

1. Deocin Deodorant-Antiperspirant Lotion; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49001 (NDA 11-048).

2. Top Brass Roll-On Deodorant; Revlon, Inc., 767 Fifth Ave., New York, NY 10022 (NDA 60-762).

3. Hi and Dri Antiperspirant Roll-On Deodorant; Revlon, Inc. (NDA 60-762).

4. Hi and Dri Cream Deodorant; Revlon, Inc. (NDA 60-761).

5. Neomycin Antiperspirant Lotion; Charles Pfizer & Co., Inc., 235 E. 42d St., New York, NY 10017 (NDA 11-805).

6. Biodorant Roll-On Deodorant; Helena Rubinstein Laboratories Inc., Northern Blvd., Greenvale, Long Island, NY 11543 (NDA 61-165).

The December 5, 1972 order provided that all outstanding certificates and releases issued for such antibiotic drugs be revoked.

In response to the notice, Revlon, Inc. (Revlon) filed written objections and a request for a hearing. Consequently, in the **Federal Register** of March 15, 1973 (38 FR 7007), FDA postponed the effective date of the revocation order to allow time for review of the material submitted by Revlon.

Revlon has since withdrawn its objections and request for a hearing. Therefore, notice is given that the order of December 5, 1972, the effective date of which was postponed by the order of March 15, 1973, is effective September 17, 1981 (*insert date 30 days after date of publication in the* **Federal Register**).

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

§ 444.542k—§ 444.542m [Removed]

§ 444.426 [Removed]

Those regulations recodified as § 444.542k *Neomycin sulfate (commercial grade)—aluminum chlorohydroxide cream deodorant,* § 444.542l *Neomycin sulfate (commercial grade)—aluminum chlorohydroxide deodorant lotion; neomycin sulfate (commercial grade)—aluminum chlorohydroxide—aluminum chloride deodorant lotion,* § 444.542m *Neomycin sulfate—aluminum chlorohydroxide deodorant lotion,* and § 444.42b *Neomycin sulfate (commercial grade),* and all outstanding certificates and releases issued for such antibiotic drugs, are revoked. No new certificates or releases will be issued. It appears from FDA's records that marketing of those product certifiable under the regulations has been discontinued.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-1051 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director, Bureau of Drugs (21 CFR 5.78).

Effective date. The revocation of 21 CFR 444.42b, 444.542k, 444.542l, and 444.542m is effective September 17, 1981.

(Secs. 502, 507, 52 Stat. 1050-1051 as amended, 59 Stat. 563 as amended (21 U.S.C. 352, 357).)

Dated: August 10, 1981.

Jerome A. Halperin,

Acting Director, Bureau of Drugs.

[FR Doc. 81-23902 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 62, and 81

[A-5-FRL 1899-6]

Approval and Promulgation of State Implementation Plans, Plans for Designated Facilities and Pollutants, and Redesignations; Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: EPA proposes to approve several State Implementation Plan (SIP) revisions, an attainment status redesignation, and a plan to control emissions of a designated pollutant for the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. This proposal is in response to requests submitted to EPA by the state agency responsible for air pollution control in each State. The intent of today's notice is to announce receipt of the requests, to propose rulemaking action, and to invite public comment on the revisions, redesignation, or control plan and EPA's proposed rulemaking. Further information on these submittals is provided below.

DATE: Comments must be received on or before September 17, 1981.

ADDRESSES: Copies of materials submitted to EPA and EPA prepared technical support documents for the respective State may be examined during normal business hours at: U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 S. Dearborn Street, Chicago, IL 60604.

Copies of the individual SIP revisions can also be examined during normal business hours at:

Ohio Environmental Protection Agency, P.O. Box 1049, 361 East Broad Street, Columbus, OH 43216.

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, MN 55113.

State of Indiana Air Pollution Control Board, 1330 West Michigan Street, Indianapolis, IN 46206.

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, IL 62706.

Michigan Department of Natural Resources, 750 Harris Drive, Lansing, MI 48917.

Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, 101 S. Webster Street, Madison, WI 53707.

Comments should be submitted, in triplicate if possible, to: Carlton Nash, Acting Chief, Regulatory Analysis Section, Air Programs Branch, Region 5, U.S Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT:

Sharon Kraft, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air Programs Branch, Region 5, 230 South Dearborn Street, Chicago, IL 60604 (312) 886–6034.

SUPPLEMENTARY INFORMATION:

Illinois (40 CFR Part 52)

Revision and Proposed Action: Bunge Corporation Variance

On September 10, 1980, the Illinois EPA submitted a site specific State Implementation Plan revision to EPA in the form of an Order of the Illinois Pollution Control Board. This Order grants Bunge Corporation's soybean processing plant and grain elevator operations at Cairo a variance from the operating permit requirements of Rules 103(b)(1,2) and from the particulate matter (TSP) emission limitation in Rule 203(g)(1)(D) of the Illinois Air Pollution Control Regulations. This variance will allow Bunge Corporation until October 15, 1981, to complete the installation of a baghouse, pneumatic ash handling system and associated equipment. Bunge Corporation is located in an attainment area for TSP and the proposed variance will not interfere with maintaining the National Ambient Air Quality Standard (NAAQS). Therefore, EPA proposes approval of this revision.

Illinois (40 CFR Part 52)

Revision and Proposed Action: Total Suspended Particulates and Carbon Monoxide

In response to an August 30, 1978, petition by Olin Corporation, whose facility is located in Williamson County, Illinois, the Illinois Pollution Control Board issued an Opinion and Order on April 3, 1980, amending Rules 203(e) and 206(b) of the Air Pollution Control Regulations. The rules set TSP and carbon monoxide (CO) standards and emission limitations for incinerators. The purpose of these amendments is to provide revised TSP and CO emission limitations for explosive waste incinerators. The Opinion and Order was submitted to EPA as a SIP revision on July 17, 1980. An analysis of the impact of the Illinois SIP revision shows that there will be a negligible effect on the environment (less than 4 tons/year of TSP and 20 tons/year of CO). Further, the analysis demonstrates that the NAAQS will be protected for both TSP and CO. EPA has analyzed these amendments and finds them acceptable. EPA proposes to approve these amendments as revisions to the SIP.

Indiana (40 CFR Part 62)

Revision and Proposed Action: Plan for Controlling Fluoride Emissions from Existing Primary Aluminum Plants

On January 21, 1981, the State of Indiana Air Pollution Control Board (APCB) submitted Rule 325 IAC 11–5 limiting fluoride emissions from existing primary aluminum plants as a revision to the SIP. EPA has reviewed the submittal and has determined that the rule requires at least 90 percent emission collection efficiency and at least 95 percent fluoride emission control efficiency, giving overall control efficiency of at least 85.5 percent which meets the requirements of Section 111(d) of the Clean Air Act (CAA). EPA, therefore, proposes approval of Rule 325 IAC 11–5 as adopted by the State on January 7, 1981.

Indiana (40 CFR Part 52)

Revision and Proposed Action: Regulation APC–14, Air Quality Standards (formerly APC–14) Ozone and Lead

On March 18, 1980, the State of Indiana APCB submitted regulatory amendments to Regulation APC–14 for ozone and lead as a revision to the SIP. This regulation was subsequently recodified as 325 IAC 1.1–2 and resubmitted on October 6, 1980. Because the amendments consist of primary and secondary ambient air quality replacement standards for ozone and lead that are identical to the national standards, EPA proposes approval of Regulation 325 IAC 1.1–2.

Indiana (40 CFR Part 52)

Revision and Proposed Action: Monitoring Requirement for Noblesville Power Generating Station

On February 26, 1981, the State of Indiana APCB requested a site specific SIP revision waiving the State's SO_2 air monitoring requirement of Section 4(a) of Rule 325IAC 7–1 for Public Service Indiana around the Noblesville Generating Station in Hamilton County. Section 4(a) requires all fuel combustion sources of a total plant capacity of greater than 500 million BTU heat input to install properly located continuous SO_2 air quality and meteorological monitors. Section 4(b) of the same rule allows modification or removal of the monitoring requirements if there is a demonstration to APCB that monitoring is not necessary. To support their request Indiana APCB submitted a summary of all available SO_2 monitoring data around the plant and a dispersion analysis using the EPA reference Single Source (CRSTER) Model. EPA has reviewed the monitoring and modeling data submitted and has determined that the SO_2 NAAQS in the vicinity of the Noblesville Station are not threatened by emissions from this plant. Therefore, EPA proposes to approve waiving the State's monitoring requirements at Public Service Indiana Noblesville Station.

Michigan (40 CFR Part 52)

Revision and Proposed Action: Section 121 Consultation

On April 25 and August 25, 1979, the State submitted Section 336.36 of the Michigan Air Pollution Act (ACT) and other material pertaining to Section 121 of the CAA. The submittal includes an outline of the process by which air pollution control rules and SIP revisions are adopted, a description of additional opportunities for local government involvement in SIP development, a list of past activities as evidence of public, local elected official, and State legislative involvement and consultation in the SIP revision process. The submittal also includes § 336.36 of the ACT which requires the Michigan Air Pollution Control Commission to consult with local officials or the governing body of the political subdivision before taking action to enforce provisions of the ACT and further states that this Commission shall counsel and advise local units of government on the administration of the Act. The Act is included in the SIP.

EPA has reviewed this material and finds that it conforms with the requirements of Section 121. Consequently, EPA proposes to approve § 336.36 of the Michigan Air Pollution Act and the April 25, 1979 submittal as meeting the requirements for consultation.

Ohio (40 CFR Part 52)

Revision and Proposed Action: Standard Oil Company of Ohio (SOHIO) Variances for—Toledo Refinery—Wastewater Separator and Vacuum Producing Unit; Lima Refinery—Wastewater Separator

On April 10, 1981, the State of Ohio submitted revisions to its ozone SIP. The

SIP revisions are for the wastewater separator and vacuum producing unit located at SOHIO's Toledo Refiner and for the wastewater separator located at SOHIO's Lima Refinery. The Toledo Refinery is located in Lucas County, Ohio, a primary nonattainment area for ozone. The Lima Refinery is located in Allen County, Ohio, a primary nonattainment area for ozone. Ohio's ozone SIP for both of these counties was approved on October 31, 1980 (45 FR 72122). According to the ozone SIP, both counties will attain the ozone NAAQS by December 31, 1982.

The April 10, 1981 SIP revision is in the form of variances. For the Toledo wastewater separator, an additional eighteen months, from January 1, 1981 to July 1, 1982, is requested to install the control equipment required by Ohio rule 3745-21-09(M)(2). For the Lima wastewater separator, an additional eleven months, from January 1, 1981 to December 1, 1981 is requested to install the control equipment required by Ohio rule 3745-21-09(M)(2). An additional two years, from December 31, 1982 to December 31, 1984 is requested to install the control equipment required by Ohio rule 3745-21-09(M)(1) for the vacuum producing unit at the Toledo Refinery.

For all three variances, the Ohio EPA has demonstrated that attainment of the ozone NAAQS will not be impeded. Furthermore, the Ohio EPA has also shown that Lucas and Allen Counties will continue to show Reasonable Further Progress (RFP) toward attainment. For the Toledo and Lima wastewater separators the additional time has been requested so that SOHIO may select and have delivered the pollution control equipment required by Ohio rule 3745-21-04(M)(2). SOHIO estimates that it will take approximately ten months to produce and deliver the equipment.

For the Toledo vacuum producing unit, SOHIO will install a new pressure system. Installation of this new system will require a shutdown of the vacuum producing unit. The next scheduled shutdown of the unit, after SOHIO receives the control equipment on February 1, 1982, is in 1984. SOHIO points out that an earlier unscheduled shutdown of the entire unit, solely for the purpose of installing the control equipment, would cause interruptions in its gas supply and have a significant adverse economic impact on its operations. SOHIO has committed itself in the variance to install the control equipment as soon after February 1, 1982 as possible, if there should be an unscheduled shutdown of the unit prior to December 31, 1984. Otherwise the permit specifies that the control equipment must be installed by December 31, 1984.

EPA has reviewed these variances and has determined that, if they are approved, the affected counties will attain the NAAQS by the statutory date, RFP will continue to be demonstrated in these counties and RACT will be implemented for these sources as expeditiously as practicable. EPA proposes to approve these variances.

Ohio (40 CFR Part 81)

Revision and Proposed Action: Harrison Township Redesignation

On February 24, 1981, the Ohio EPA (OEPA) requested EPA to redesignate Harrison Township in Pickaway County from primary nonattainment to attainment for sulfur dioxide (SO_2). To support the request, OEPA stated that the Pickaway Power Plant (the only major source of SO_2 in the Township) is in compliance with the existing Federal SO_2 emission regulations and boiler shutdown as required by the SIP. EPA established these regulations based on comprehensive dispersion modeling analyses using reference methodology using reference methodology to determine the limits which are necessary to protect the NAAQS. Compliance with the existing federal SO_2 regulations is adequate proof that the ambient standards are being protected. EPA proposes approval of the redesignation.

Minnesota (40 CFR Part 52)

Revision and Proposed Action: Stipulation Agreement with Erie Mining Company

On February 20, 1981 the State of Minnesota submitted a SIP revision for TSP for the Erie Mining Company. The Company is engaged in the mining, processing, pelletizing, storage, and shipping of taconite ores near Hoyt in St. Louis County, Minnesota. St. Louis County is designated by EPA as a TSP attainment area. (43 FR 8962, 9005).

The Company's pelletizing facility includes 27 vertical shaft furnaces. Three types of American Standard dry multitube centrifugal collectors are presently utilized to control the top gas particulate emissions from the shaft furnaces. The emissions from these furnaces exceed Minnesota's particulate (APC 5(C)(3)) and opacity (APC 5(c)(1)(bb)) limitations. Therefore, the Minnesota Pollution Control Agency and the Erie Mining Company entered into a Stipulation Agreement which would allow the Company to exceed the requirements of Minnesota's Rules APC 5(c)(3) and APC 5(c)(1)(bb) until December 31, 1983. The Agreement contains enforceable interim milestones and other requirements and prohibits the Company from increasing emissions beyond present levels.

Existing rules require at least 85% efficient control equipment and a 20% opacity limit with certain restrictions.

To come into compliance with the applicable rules, Erie Mining Company will implement a control strategy which will provide for 90% control, 5% more than is required by the State, by December 31, 1983. The Company has agreed to proceed with one of the following alternatives.

1. Install heat exchangers on twelve of the twenty-four furnaces. The emissions from twelve other furnaces would be controlled by modifying the existing collectors.

2. Install heat exchangers on twenty-four furnaces.

For the above two alternatives, a decision on the three remaining furnaces will be reserved with the understanding they will not operate after December 31, 1983 unless the control equipment achieves 90% efficiency.

EPA has reviewed the Agreement as a proposed SIP revision. It has concluded that Erie Mining Company is located in an attainment area and that TSP NAAQS will be protected during the period of the Agreement. Additionally, by December 31, 1983 the control equipment will achieve 90% efficiency, 5% more than is required by the State. (An opacity limit will be developed that reflects 90% control.) Therefore, EPA is proposing to approve the Stipulation Agreement for Erie Mining Company as a revision to the Minnesota SIP.

Wisconsin (40 CFR Part 52)

Revision and Proposed Action: Approval of Wisconsin Rule NR 154.09 Emissions Prohibited

On July 12, 1979, the State of Wisconsin submitted amendments to Rule NR 154.09. NR 154.09 in the Wisconsin regulations grants an exemption from emissions limitations of criteria pollutants to sources which (a) have a delayed compliance order, (b) temporarily violate the limits due to startup, shutdown, equipment maintenance or equipment breakdown or (c) violate the limit only because of emergency or reserve equipment. The amendments to the rule, however, delete the exemption for equipment breakdown and require that any use under NR 154.09(1)(b) be carried out in accordance with a plan and schedule approved by the Department of Natural Resources. The amendments also delete the 15 day

limitation in NR 154.09(1)(c). EPA has reviewed these amendments and finds they will not interfere with the attainment and maintenance of the NAAQS. Therefore, EPA proposed to approve these amendments as revisions to the Wisconsin SIP.

Under Executive Order 12291 EPA must judge whether a proposed regulation is a major rule and therefore subject to the requirement of a regulatory impact analysis. The proposed regulations are not major because they impose no new regulatory requirements and merely propose to approve State-requested revisions to their SIPs. These regulations were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Pursuant to the provisions of the Regulatory Flexibility Act, the Administrator has certified that SIP approvals and revisions of attainment status designations under Sections 110, 172, and 107(d) respectively of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709). Those actions in the attached rule which constitute SIP approvals under Sections 110 and 172 and redesignations under Section 107(d) are within the terms of the certification. Furthermore, the Administrator has certified that the action taken under the authority of Section 111(d) of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. These regulations only approve State actions and impose no new requirements.

(Secs. 111(d), 107(d), 121, 110, and 301(a) of the Clean Air Act, as amended)

Dated: July 24, 1981.

Valdas V. Adamkus,

Acting Regional Administrator.

Certification of No Significant Impact On a Substantial Number of Small Entities Under Regulatory Flexibility Act Regulation:

Title:

Indiana

Plan for controlling fluoride from primary aluminum plants.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the portion of the attached rule relating to the action approving the State of Indiana's plan for controlling fluoride from primary aluminum plants will not have a significant economic impact on a substantial number of small entities. This proposed action imposes no additional regulatory requirements beyond those required by the State. It merely proposes to approve the plan at the State's request.

Dated: August 8, 1981.

Anne M. Gorsuch,

Administrator.

[FR Doc. 81-24087 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 60

[A-7-FRL 1892-7]

Standards of Performance for New Stationary Sources; Adjustment of Opacity Standard for Fossil Fuel Fired Steam Generator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposed to adjust the NSPS opacity standard applicable to Omaha Public Power District (OPPD) Nebraska City Power Station, Nebraska City, Nebraska. The proposal is based on OPPD's demonstration of the conditions that entitle it to such an adjustment under 40 CFR 60.11(e).

The intended effect of this proposed rule is to allow the source to avail itself of the waiver provisions of 40 CFR 60.11(e) which deal with compliance with standards and maintenance requirements.

DATES: Comments must be received on or before September 17, 1981.

ADDRESSES: Comments should be submitted in writing to Director, Enforcement Division, EPA, Region VII, 324 E. 11th Street, Kansas City, Missouri 64106. Background information and comments on the proposed standard will be available for public inspection and copying (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Anthony P. Wayne or Henry F. Rompage, Enforcement Division, EPA, Region VII, 324 E. 11th Street, Kansas City, Missouri 64106, telephone 816/374-7152.

SUPPLEMENTARY INFORMATION: The Standards of Performance for fossil fuel-fired steam generators as promulgated under Subpart D of Part 60 on December 23, 1971 (36 FR 24876) and amended on December 5, 1977 (42 FR 61537) allow emissions of up to 20 percent opacity except that 27 percent opacity is allowed for one six-minute period in any hour. This standard also required reporting as excess emissions all hourly periods during which there are two or more six-minute periods when the opacity exceeds 20 percent.

On May 12, 1981, OPPD of Omaha, Nebraska petitioned EPA under 40 CFR 60.11(e) to adjust the New Source Performance Standard (NSPS) 20 percent opacity standard applicable to its Nebraska City Power Station in Nebraska City, Nebraska. EPA proposes to grant the petition for adjustment, as OPPD has demonstrated the presence at its Nebraska City Power Station of the conditions that entitle it to such relief as specified in 40 CFR 60.11(e)(3).

On the basis of sixteen performance tests conducted from February 25, 1981, to April 16, 1981, EPA determined that the plant was in compliance with all applicable new source performance standards except opacity. Opacity readings during the performance testing were as high as 39%.

In its petition for adjustment of the opacity standard, OPPD made the following showing: (a) the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; (b) the tests were performed under the conditions established by the Administrator, and (c) the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

As described in the March 8, 1974, **Federal Register** (39 FR 9308), the Agency utilizes opacity standards as a means to ensure proper operation and maintenance of control systems on a day to day basis. Opacity standards are regulatory requirements, just like the concentration/mass standards. They are separate standards and it is not necessary to show a violation of the mass standard to support enforcement of the opacity standard. Where opacity and concentration/mass standards are applicable to the same source, the opacity standard is not more restrictive than the concentration/mass standard. The concentration/mass standard is established at a level which will result in the design, installation, and operation of the best adequately demonstration system of emission reduction (taking costs into account) for each source.

The control method used by OPPD at the Nebraska City Power Station is a hot side electrostatic precipitator. OPPD submitted test results and operations data to EPA for review. The EPA evaluated the data as to operating conditions and opacity confidence levels, and found the data represented the boiler operating in a manner to minimize the opacity. Since the facility can meet and exceed all NSPS emission limitations except opacity with the current control equipment, it does not appear the requiring of large additional expenditures and control equipment are warranted.

In view of the above, EPA proposes that OPPD's Nebraska City Power Station be excused from compliance with the 20% opacity standard of 40 CFR 60.42(a)(2). As an alternative, it is proposed that OPPD shall not cause to be discharged into the atmosphere from the Nebraska City Power Station any gases which exhibit greater than 30 percent opacity, except that a maximum of 37 percent opacity shall be permitted for not more than one six-minute period in any hour. The adjustment will not relieve OPPD of its obligation to comply with any other federal, state, or local opacity requirements.

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not "major" because it only approves a slight variance in opacity as provided for in 40 CFR 60.11(e) and imposes no additional substantive requirements which are not currently applicable under applicable NSPS requirements. Hence it is unlikely to have an annual effect on the economy of $100 million or more, or to have other significant adverse impacts on the national economy.

This rule was submitted to the Offic of Management and Budget (OMB) for review as required by Executive Order 12291.

Secs. 111 and 301(a) of the Clean Air Act, as amended (42 USC 7411 and 7601(a))

Dated: July 15, 1981.

William W. Rice,

Acting Regional Administrator.

Pursuant to the provisions of 5 U.S.C. section 605(b) I hereby certify tht this proposed action will ot if promulgated, have a significant economic impact on a substantial number of small entities. The reason for this finding is that this action only affects one entity.

Dated: August 8, 1981.

Ann M. Gorsuch,

Administrator.

In consideration of the foregoing, it is proposed to amend Part 60 of 40 CFR Chapter I as follows:

Subpart D—Standards of Performance for Fossil Fuel-Fired Generators

1. Section 60.42 is amended by adding paragraph (b)(3) as follows:

§ 60.42 [Amended]

* * * * *

(b) * * *

(3) Omaha Public Power District shall not cause to be discharged into the atmosphere from its Nebraska City Power Station in Nebraska City, Nebraska, any gases which exhibit greater than 30% opacity, except that a maximum of 37% opacity shall be permitted for not more than six minutes in any hour.

(Sec. 111, 301(a), Clean Air Act as amended (42 USC 7411, 7601))

2. Section 60.45(g)(1) is amended by adding paragraph (iii) as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) * * *

(1) * * *

(iii) For sources subject to the opacity standard of Section 60.42(b)(3), excess emissions are defined as any six-minute period during which the average opacity of emissions exceeds 30 percent opacity, except that one six-minute average per hour of up to 37 percent opacity need not be reported.

[FR Doc. 81-24084 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-5-FRL-1905-3]

Designation of Areas for Air Quality Planning Purposes Attainment Status Designations; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to change the sulfur dioxide (SO_2) designation for Stark County, Ohio from nonattainment to attainment. This revision is based on a request from the State of Ohio to redesignate Stark County as attainment for SO_2. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: Comments must be submitted by no later then September 17, 1981.

ADDRESSES: Written comments should be addressed to: (Please submit an original and four copies if possible) Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the redesignation request, technical support documents, and the supporting air quality data are available for copying and inspection during normal business hours at the Region V address and at the Public Information Reference Unit. A telephone call to Region V is recommended prior to your visit. A reasonable fee will be charged for copying.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20480.

Copies of the supporting material submitted by Ohio are also available at: Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 E. Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d), which directed each state to determine the National Ambient Air Quality Standards (NAAQS) attainment status of each air quality control region within the state, and to submit to the Administrator of EPA a list of the attainment status of each area. The Administrator was required to promulgate the state lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On March 3, 1978 (43 FR 8962), pursuant to section 107(d) of the Clean Air Act, as amended, EPA designated Stark County nonattainment for the primary SO_2 NAAQS. EPA ameded the designation on October 5, 1978 (43 FR 45993). EPA designated the following area of Stark Couty as nonattainment for the primary SO_2 NAAQS: Cities of Alliance, Hartville, Louisville, North Canton, Canton, and Fairhope; Townships of Lexington, Lake, Nimishillen, Plain, Canton and Perry. The remainder of Stark County was designated as attainment for SO_2.

At the time of the above designations, a number of sources in the nonattainment portion of Stark County were not in compliance with the federally promulgated SO_2 emission limitations. EPA established the SO_2 limits for this county after a comprehensive analysis using RAM—urban modeling techniques. These limits were demonstrated by EPA to be adequate to ensure attainment and maintenance of the NAAQS. Consequently, a certification of compliance with these emission limitations is adequate proof that the NAAQS would be protected and be an acceptable basis for redesignation.

On February 11, 1981, Ohio EPA requested EPA to redesignate Stark County as attainment for sulfur dioxide.

On July 14, 1981, Ohio EPA submitted supplemental information to support the redesignation. To support the redesignation request, Ohio EPA certified that the majority of the sources in Stark County are in compliance with the existing emission limitations contained in 40 CFR Part 52.1881(b) (58). On two sources where Ohio EPA did not have adequate information to determine the compliance status of a source, EPA had adequate data to certify compliance. Therefore, based on a combination of Ohio EPA and USEPA data, all sources in Stark County are in compliance with the existing federal emission limitations at this time.

As additional support for the redesignation, Ohio EPA submitted all available SO_2 monitoring data collected in and around the current nonattainment area. For redesignations based solely on monitoring data, EPA requires that the most recent eight calendar quarters of quality assured data from representative monitoring sites must show no violations of the NAAQS. Based on Ohio EPA's data as well as EPA's data, no violations of the primary and secondary standard have been measured since at least 1978 at the reference monitors in Stark County. Eight consecutive quarters of quality assured data, however, are not available at the reference monitors. Consequently, this redesignation is not based solely on monitoring data. Nevertheless, the data can be used to reinforce EPA's proposed redesignation to attainment since there were no violations measured in Stark County.

Therefore, EPA today proposed to redesignate the SO_2 nonattainment portions of Stark County as attainment, thus making all of Stark County attainment for SO_2. All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Pursuant to Executive Order 12291 (Order), EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation; it does not impose any new regulatory requirements. This action was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

Pursuant to the provisions of 5 U.S.C. section 605(b), the Administrator has certified that revisions of attainment status designations under Section 107(d) of the Clean Air Act will not have a significant economic effect on a substantial number of small entities (46 FR 8709). The attached rule, if promulgated, constitutes a revision to an attainment status designation within the terms of this certification. This action imposes no additional regulatory requirements.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: July 31, 1981.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 81-24086 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Federal-State Joint Board; Order extending time for filing comments and reply comments.

AGENCY: Federal Communications Commission—Federal-State Joint Board.

ACTION: Requests for comments and proposed information requests; Extension of comments and replies period.

SUMMARY: We are extending the time for filing the second round of comments and replies in CC Docket 80-286, *Amendment of Part 67 of the Commission's Rules*, (relating to jurisdictional separations) to ensure that all parties have an adequate amount of time to prepare their filings.

DATES: Comments must be received by August 17, 1981. Replies are to be filed by August 31, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau at (202) 632-9342.

In the matter of amendment of Part 67 of the Commission's Rules and establishment of a Joint Board: CC Docket No. 80-286 (6-22-81; 46 FR 32281).

Adopted: August 6, 1981.

Released: August 10, 1981.

By the Chief, Common Carrier Bureau for the Federal-State Joint Board.

1. On June 10, 1981, the Joint Board adopted an Order inviting comments on a number of issues in this proceeding. The first round of comments was to focus on whether the Joint Board should consider modifications to the Separations Manual dealing with customer premises equipment as an initial phase of this proceeding, and if so, whether the proposal set out in Appendix B for phasing customer premises equipment out of the separations process was a desirable way to accomplish this. These comments were filed on July 6, 1981. Replies were filed on July 20, 1981. The second round of comments was to address the list of specific questions proposed for consideration in this proceeding contained in Appendix A as well as certain other matters. These comments were scheduled to be filed on August 11, 1981. Replies were due August 26, 1981.

2. United States Transmission Systems, Inc. (USTS) filed a Motion for Extension of Time on July 27, 1981 asking that the date for filing the second set of comments be deferred to August 18, 1981. USTS also requested a one week extension of the date for filing replies. In support of its request, USTS stated that the original filing date of August 11, 1981 would make it virtually impossible for interested parties to take the results of the Joint Board meeting in San Diego, California into account in preparing their comments despite the potential importance of developments at that meeting.

3. Due to the air traffic controllers' strike, the August 5, 1981 Joint Board meeting was postponed. Notwithstanding this postponement, however, we believe that extension of the dates for filing the second round of comments and replies would not be inappropriate. The grant of a brief extension would not delay this proceeding and would help insure that the parties have adequate time to address the issues raised. Therefore, we extending the time for filing comments on August 17, 1981. Replies are to be filed by August 31, 1981.

4. Accordingly, it is ordered, That USTS' Motion for Extension of time is granted in part as set forth above.

Jack D. Smith,

Acting Deputy Chief (Operations), Common Carrier Bureau.

[FR Doc. 81-23903 Filed 8-17-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-522; RM-3582]

FM Broadcast Station in Carnelian Bay, South Lake Tahoe, and Truckee, California, and Incline Village, Nevada; Table of Assignments; Correction

AGENCY: Federal Communications Commission. Proposed rule.

ACTION: Correction.

SUMMARY: This action corrects an erroneous listing in the proposed changes to the FM Table of Assignments for Carnelian Bay, California. In fact, the channel is assigned to Truckee, California, but is used at Carnelian Bay by Station WEZC.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Released: August 7, 1981.

By the Chief, Policy and Rules Division:

In the Matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Carnelian Bay, South Lake Tahoe, and Truckee,[1] California, and Incline Village, Nevada); (46 FR 39627).

1. In paragraph 4 of the *Further Notice of Proposed Rule Making* in the above-captioned docket, adopted July 21, 1981, and released July 28, 1981, the Commission stated that it would consider substituting Channel 279 for Channel 269A at Carnelian Bay, California. In fact, although Channel 269A is used at Carnelian Bay by Station WEZC, the channel is listed in the Table of Assignments as being assigned to Truckee, California. Therefore, we shall propose to delete Channel 269A from Truckee and assign Channel 279 to Carnelian Bay. In the event the Commission determines not to substitute the Class B channel for the Class A channel, we shall reassign Channel 269A from Truckee to Carnelian Bay in acknowledgement of its actual use at Carnelian Bay. This correction also needs to be made in paragraph 6 of the *Further Notice*, which lists the proposed changes in the Table of Assignments. Paragraph 6 should therefore read as follows:

6. Accordingly, the Commission further proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Carnelian Bay, CAL	.....	269A or 279
South Lake Tahoe, CAL	261A, 176A	230, 275
Truckee, CAL	269A	.....
Incline Village, NEV	228A	261A

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-24017 Filed 8-17-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 74

[BC Docket No. 81-497; RM-3762; FCC 81-368]

Short-Term Operation Without Prior Approval; Creation of New Auxiliary Broadcast Service License Class To Permit Non-Broadcast Station License Holders To Be Licensed and Operate Radio Relay Stations for Direct Rebroadcast of Program Material

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is issuing a *Notice of Proposed Rule Making* asking for comments on a petition filed by Henry B. Ruh which, in brief, asks for amendment of Part 74 of the Commission's Rules to provide for operation of stations in the Auxiliary Broadcast Services by non-broadcast entities on a "for hire" basis. The various implications of this proposal are discussed, with the result that the Commission makes a counterproposal (believed to be responsive to the essential need articulated by the petitioner) to amend Part 74, Subparts D, E, F, and H, to provide for short-term (up to 30 days) operation in the Auxiliary Broadcast Services without prior Commission approval. Additionally, to enable smaller broadcast entities to qualify for licenses in the Auxiliary Broadcast Services, the Commission proposes to eliminate the present requirement that licensees install the minimum number of transmitters authorized within 120 days of the grant date of the license.

DATES: Comments on the proposed amendments are due on September 14, 1981, and reply comments are due on September 29, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Policy and Rules Division, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: July 30, 1981.

Released: August 12, 1981.

In the matter of amendment of Part 74, Subparts D, E, F, and H of the Commission's Rules to provide for short-term operation without prior approval; creation of a new auxiliary broadcast service license class to permit nonbroadcast station license holders to be licensed and operate radio relay stations for direct rebroadcast of program material.

1. The Commission has under consideration the above-captioned petition filed by Henry B. Ruh ("petitioner") which essentially proposes the operation of stations in the Auxiliary Broadcast Services on a "for hire" basis by non-broadcast entities.

2. Petitioner states that while the Commission's present Part 74 Rules[1] permit broadcast licensees to operate studio-to-transmitter (STL) links, remote pickup links and TV pickups links, they do not provide for licensees to use similar communication links furnished by outside, non-broadcast services (such as support engineering services or entities who contract for engineering services with more than one station). Petitioner states that there are occasions when communication links such as STL's or intercity relays are needed on a short term basis, and even when program organization personnel are needed in addition to the communication equipment to provide commentary or coverage. Broadcast licensees must now apply and wait a considerable amount of time for a license, or seek special temporary authorization (STA) to operate equipment which is rented on a short term basis or borrowed from another broadcast station. This situation, in the view of the petitioner, is an unnecessary burden on broadcasters and he thinks that it would be in keeping with the basic precepts of the Commission's Rules, would promote public safety, enhance program service, conserve spectrum and be an overall benefit to the community if a single entity, not currently engaged in broadcasting as a licensee (AM, FM or TV) could supply such services for various purposes detailed in his petition.[2]

[1] This community has been added to the caption.

[1] See, for example, §§ 74.432(a), 74.532(a) and 74.632(a). It should be noted that under certain conditions set forth in § 74.432(a) a "network entity," which may or may not be a broadcast licensee, is also eligible for licensing.

[2] The services described involve typical use of remote pick-up broadcast, STL and low power auxiliary stations, although intercity relay stations are not necessarily precluded. The applicability of the proposed changes to TV auxiliary broadcast stations is only by reference. (See the last sentence

Continued

3. This petition is similar to that filed by Professional Broadcasting Services, Inc. (PBSI) in 1976, which proposed the creation of a new class of eligible entity called the "system lessor," to operate remote pickup broadcast stations on a "for hire" basis.[3] That petition was denied, and as the proposed advanced by Ruh is very similar, it could be denied on the same basis.

4. When denying the petition of PBSI, however, we stated that "* * * while we would not automatically rule out of a specialized communications entity approach as a solution to the problems cited by the petitioner, we believe that there may be other viable alternatives available to provide the desired relief. One possibility would be to provide for non-profit cooperative-use sharing agreements like those which are available to licensees in the private land mobile radio services. Another possibility (which is to be studied by the Broadcast Bureau's Reregulation Task Force) would be to allow holders of a license under Part 73 automatic access to all of the frequencies available for auxiliary station operation, thereby making the issuance of individual remote pick-up broadcast station licenses unnecessary." [4] Since that time, we have considered these and other alternatives, including reconsideration of the specialized communications carrier (hereinafter referred to as SCC) approach suggested by PBSI and Ruh, with the result discussed below.

5. The Commission is persuaded that the time is appropriate for the initiation of a rule making proceeding looking toward the resolution of the essential problem identified by the petitioner—which is the need for more ready access to broadcast auxiliary services spectrum for short-term use. This conclusion has been reached not so much on the merit of the proposals hitherto made, but by the conviction that some type of relief is appropriate in view of the number of requests for STA which we receive annually and that some form of relaxation of existing policy would lead to more effective use of the available spectrum to the public benefit. We recognize that the broadcast auxiliary spectrum is already intensively used in some areas, but we believe, after consideration of time and location variability factors, that in general, additional use of the spectrum is possible without degradation of present service and that the additional usage likely to result from the proposed changes will lead to higher quality and diversity of local program service. Further, we believe the proposals about to be discussed (which are essentially deregulatory in nature) will result in fewer administrative burdens on both the Commission and its broadcast licensees and are consistent with the purposes of the Regulatory Flexibility Act of 1980.[5] The Commission is specifically proposing: (a) to delete the present requirement that licensees install the minimum number of authorized transmitters within 120 days of the grant date of their remote pickup or low power auxiliary broadcast license; and, (b) to allow automatic access to Part 74 frequencies by Part 73 licensees for period of up to 30 days, continuous or aggregate on an annual basis.

Discussion of Issues

6. We continue to believe that our approval of some type of SCC should be avoided, if possible. This concern stems from the belief that broadcasters and the very restricted number of broadcast-related entities presently eligible in the various auxiliary services should have the fullest possible flexibility over the manner in which they are allowed to make use of the available spectrum. The frequencies available for use in these services, rule provisions to the contrary notwithstanding,[6] are no longer assigned on an exclusive-use basis. Informal frequency coordination procedures [7] in use among eligible entities have worked well up to the present and are likely to continue to do so provided use of the spectrum increases on a gradual basis.

7. An SCC, we believe, is less likely to be sufficiently concerned about pre-existing operations and primarily occupied with meeting the communications requirements of new customers. This could result in conflict over the use of specific frequencies, notwithstanding any secondary use provisions which could be put in the rules applicable in cases of such conflict or SCC operation in general. Then there is the possibility that in certain areas, an SCC could devolve into a *de facto* frequency coordinator or broker, a result which is inconstistent with the nature of the auxiliary services and which could lead to inter-carrier disputes over the use of specific frequencies. Our alternative approach removes the possibility of a non-broadcast SCC controlling who has access to the frequencies in the auxiliary services and places the burden of compliance with the rules on the individual broadcaster. For these reasons we feel that RM-3762 should be denied. However, before doing so we wish to obtain additional comments on the petitioner's proposal, in addition to comments on the alternative proposal we will make, *infra*.

8. We have also given additional thought to our own suggestion of amending the rules to allow non-profit, cost-sharing agreements among broadcasters. Under this alternative, a broadcaster holding a license in the auxiliary services could allow equipment to be used by other broadcast stations, but only on a non-profit basis. Thus, equipment rented by the licensee could be sublet to other broadcasters on a *pro rata* basis over time. If the licensee owned the equipment, the equipment could be loaned with the understanding that the recipient would be responsible for any needed repairs; or if an annual maintenance contract was held by the licensee, the cost could be passed on to the recipient for the time interval over which the equipment was loaned. Similarly, any other costs incurred by the licensee could be passed on to other broadcasters if done on a *pro rata* over time or otherwise equitable non-profit basis. Under this type of arrangement, the licensee would always be responsible for the proper operation of the equipment. Also, whenever a new broadcast station was to be added to the licensee's list of potential users, the license would have to be modified to show the stations being rendered communications service.

9. The disadvantage of the above-mentioned approach, we feel, is that it could concentrate control over the use of the spectrum in the hands of the larger or wealthier broadcasters. Smaller broadcasters would be subject to the whim and caprice of the licensee as to if, when or for how long equipment is available. In addition, the non-profit requirement might enmesh the Commission in disputes over whether the compensation given to the licensee is, in fact, non-profit. The result might be greater delay, rather than faster equipment availability. Thus, the

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of Paragraph 2, *supra*.) However, because TV auxiliary special temporary authorizations account for about ½ of those we authorize, we have decided to include Subpart F in this proceeding.

[3] See *Memorandum Opinion and Order*, RM-2854, adopted September 25, 1980, (FCC 80-555, released October 9, 1980.)

[4] *Ibid.*, Paragraph 8.

[5] Public Law 96-354, adopted September 19, 1980. See, in particular, section 2 (a).

[6] See § 74.602 (b) through (e) and § 74.604(b). These exclusive-use provisions are in practice impossible to satisfy in many cases and may be eliminated in a separate rule making proceeding in the near future.

[7] Unlike may other radio services, the broadcast auxiliary services have no designated frequency coordinator. Accordingly, the use of frequencies is coordinated through informal agreements made by broadcasters (and, in the case of frequencies shared with other services, other licensees) in any given area.

implementation of this alternative could lead to consequences worse than those likely under the domination of SCC's.[9]

10. In denying the PBSI petition, we also promised to give consideration to amending the rules to allow holders of a broadcast license under Part 73 automatic access to all of the frequencies available for auxiliary station operation.[9] However, after additional internal review of this proposal, it now appears impractical due to international notification and frequency coordination requirements. Nevertheless, a variant on this idea may be possible, as will be discussed, *infra*.

Counterproposal

11. We first propose to eliminate the requirement, in Subparts D and H of our Rules, that licensees install the minimum number of transmitters authorized within 120 days of the date of issue of the license.[10] This will make it possible to apply for a license without having to purchase equipment or rent it on an ongoing basis. An applicant would be expected to apply for a frequency or frequencies for use only after consultation with broadcasters or other licensees in the area in an effort to select frequencies which would cause the minimum amount of interference to the existing radio environment. Equipment could then be purchased, rented or borrowed at the licensee's option. The licensee would also have full responsibility for the proper use of the equipment, regardless of whether or not it was to be operated by station personnel, or special personnel temporarily employed by the licensee. The equipment provider would be free to supply equipment on a basis most appropriate in terms of the relationship to the licensee, be it for free, at cost, or for profit.

12. However, there may be cases where authorizing the use of specific frequencies to a broadcaster may be inadvisable. If, for example, the actual use of the assigned frequencies is expected to be so light that consideration given to such a licensee by other potential users would be misdirected, it would be better for a broadcaster not to seek a permanent authorization. Then, too, since it is impractical to assign all possible frequencies to an individual applicant, it is still possible that regardless of the number of frequencies which may be assigned, the demand at a given time may be such that not all users' desires can be satisfied. In the past, when either of these situations occurred, the alternative was to request special temporary authorization to operate on a previously unauthorized frequency for a short period of time. However, since such requests are invariably approved we see no reason to continue a practice which is an unnecessary administrative burden on both licensees and the Commission.

13. Accordingly, we are proposing that in areas of the country south of Line A and west of Line C (alternative provisions will apply to Subparts E and F), Part 73 licensees may operate on appropriate Part 74 frequencies for not more than 30 days on a secondary, non-interference basis to regularly authorized operations.[11] Such operation near the United States-Canada border would have the potential for conflicting with Canadian use of the same spectrum; and, due to the nature of the United States-Canadian Agreement, cannot be authorized, even on a secondary, non-interference basis. With few exceptions, it is our policy not to grant requests for special temporary authorization in these areas. In spite of this limitation, it is evident that the proposed change will benefit a geographically large portion of the country. However, we note that the United States is near completing a new frequency coordination agreement with Mexico which could lead to new restrictions along the United States-Mexican border in the near future. Any changes necessary to comply with that or any other international agreement will be incorporated into the rules as circumstances dictate. In anticipation of such an agreement and to avoid the possibility of interference problems with Mexican stations, we ask for comment on the feasibility of precluding the short-term operation herein proposed in areas within 75 miles (120 km) of the United States-Mexico border.

14. We believe that the changes in the rules proposed herein (specifically, as set forth in the attached Appendix) would be responsive to the basis needs identified by the petitioner, that they would be conducive to higher quality and greater diversity of programming, particularly on the part of smaller broadcasters, and that they would exert the least adverse impact on the broadcast auxiliary services (particularly with respect to the basic nature of these services and the coordination and use of the available frequencies) compared to any other alternative having the same objective.

15. *Regulatory Flexibility Act initial analysis:*

I. *Reason for action.* The Commission has considered a petition for rule making; and, while not agreeing with the remedial measures proposed therein, finds merit in the basic contention that something should be done to make broadcast auxiliary frequencies more available to small broadcasters and to reduce the administrative and procedural burdens associated with the present rules.

II. *The objective.* The Commission desires to amend its Rules to eliminate requirements which are no longer deemed necessary and which impose a particular burden on small broadcasters. Specifically, the implicit requirement that a licensee own (or lease on an ongoing basis) transmitting equipment in the broadcast auxiliary services would be eliminated; and the requirement to obtain a special temporary authorization for operation on previously unauthorized frequencies would be eliminated to the extent possible without conflicting with international notification and Canadian coordination procedures.

III. *Legal basis.* The action proposed is in furtherance of section 4(i) and 303(r) of the Communications Act of 1934, as amended, which permits the Commission to make rules and regulations not inconsistent with other existing laws, as may be necessary in the execution of its functions, with the additional view of securing the public welfare. The changes proposed are also in furtherance of the objectives of the Regulatory Flexibility Act of 1980

[9] This statement is intended as largely hypothetical in nature. Due to the large number of licensees in the services, it is unlikely that any one licensee, SCC or otherwise, could obtain a generally dominant position. However, pockets of domination are possible, particularly in rural areas, where the resources of many broadcasters are often limited.

[9] See Footnote 3, *supra*, *Op. Cit.* at Paragraph 8.

[10] See § 74.432(d) and § 74.832(g).

[11] "Line A" and "Line C" are imaginary lines about 75 miles within the United States' side of the two United States-Canada borders. Frequency assignments within these lines and the actual United States-Canada border must receive prior approval from the Canadian Department of Communications. By "appropriate," we mean in accordance with the permissible uses of such frequencies, as well as with any special conditions or limitations which may apply. It should be noted that all of the frequencies listed in the tables are not available for use in all parts of the country. The 30-day period was selected as being sufficiently reasonable in length to accommodate most operations for which an STA is traditionally sought. The term "secondary, noninterference basis" means that operation on a particular frequency must be discountinued immediately if any perceptible degradation to the operation of a regularly licensed station results. While it is not proposed in the rules set forth in the attached Appendix, we ask for comment on whether or not licensees operating on a short-term, secondary, basis should notify the Commission of such operation by telegram. This information could be retained by the Field Operations Bureau's "watch officer" on a 24 hour-a-day availability basis and may be useful in the resolution of any interference problems.

(Public Law 96-354) as set forth in section 2(a).

IV. *Description, potential impact and number of small entities affected.* The rule changes proposed would benefit all broadcast stations somewhat, due to the administration convenience of not having to obtain an STA in many cases. However, the elimination of the 120 day equipment acquisition and installation requirement would primarily benefit small stations which are unable to afford such equipment on a permanent basis.[12] However, in the AM and FM services, small stations undoubtedly account for a majority of the stations authorized. In the TV services, a majority of non-network affiliated stations and even many network affiliated stations located outside of large metropolitan areas could probably be considered "small." Thus, the number of stations which could potentially benefit from the proposed changes is substantial and very likely in the majority. The type of communications firms likely to rent communications equipment to licensees in the auxiliary services are also likely to be considered small, on the basis of a relative comparison. The impact on these entities is undoubtedly beneficial, since additional demand for use of equipment is likely; but the extent of the additional demand is unknown.

V. *Recording, record-keeping and other compliance requirements.* In view of the changes proposed, there may be no need to issue individual licenses in a number of cases (see Paragraph 12, *supra*). Thus, there is no doubt that the elimination of the need to obtain an STA in many cases represents a clear reduction in overall administrative burden compared to the present practice.

VI. *Federal rules which overlap, duplicate or conflict with these rules.* None. In fact this proceeding is a good example of how the regulatory requirements arising from the implementation of the Communications Act of 1934, as amended, can be made to harmonize well with the objectives of the Regulatory Flexibility Act of 1980.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective.* We have discussed two alternatives (permitting the operation of SCC's and the use of a non-profit, cost-sharing agreement) above. Adoption of the SCC alternative would probably further reduce the administrative burden imposed on small broadcast entities who would decide to seek a regular license for operation in the auxiliary services. The non-profit, cost-sharing arrangement is likely to have a similar effect; but places the administrative burden on the larger broadcaster who is the licensee. However, as we have stated previously, the SCC alternative appears contrary to the nature of the auxiliary services and both it and the non-profit, cost-sharing arrangement have potential drawbacks which are likely to outweigh potential benefits. Retaining the *status quo* would appear to have no beneficial impact on small entities, broadcast or otherwise.

16. Accordingly, IT IS PROPOSED TO AMEND Part 74 of the Commission's Rules and Regulations as set forth in the attached Appendix.

17. Authority for the actions taken herein is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

18. Pursuant to the procedures set out in §§ 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before September 14, 1981, and reply comments on or before September 29, 1981. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

19. In accordance with Section 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in this proceeding may submit one copy of their comments, specifying BC Docket Number 81-497.

20. All filings in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M St., N.W., Washington, D.C.

21. For further information concerning this proceeding contact James E. McNally, Jr., Broadcast Bureau (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

22. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of this proceeding in this manner, he or she should follow the Commission's procedures governing *ex parte* contacts in informal rule making. A summary of these procedures is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202) 632-7000.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 507)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

It is proposed to amend 47 CFR Part 74 of the Commission's Rules and Regulations as follows:

1. Section 74.401 would be amended to include definitions of "Line A" and "Line C" to be inserted alphabetically as follows:

§ 74.401 Definitions.

* * * * *

Line A. A line above which frequency assignments made by the Federal Communications Commission are coordinated with the Canadian Department of Communications and which begins at Aberdeen, Washington, running by great circle arc to the intersection of 48° N., 120° W., then along parallel 48° N., to the intersection of 95° W., then by great circle arc through the southernmost point of Duluth, Minnesota, then by great circle arc to 45° N., 85° W., then southward along meridian 85° W., to its intersection with parallel 41° N., then along parallel 41° N., to its intersection with meridian 82° W., then by great circle arc through the southernmost point of Bangor, Maine, then by great circle arc through the southernmost point of Searsport, Maine, at which point it terminates.

Line C. A line east of which frequency assignments made by the Federal Communications Commission are coordinated with the Canadian Department of Communications and which begins at the intersection of 70°

[12] At this time, the Commission has not developed its own definitions of what constitutes "small" stations. However, for the purposes of this proceeding, the definitions given in 13 CFR 121.3-10(1) [*Communications.*] may be useful. Subparagraph (1) of that section defines as small any firm primarily engaged in radio broadcasting which has annual recepits of less than 2 million dollars. Subparagraph (2) defines as small any firm primarily engaged in television broadcasting which has annual receipts of less than 5 million dollars.

N., 144° W., then by great circle arc to the intersection of 60° N., 143° W., then by great circle arc so as to include all of the Alaskan Panhandle.

* * * * *

2. In section 74.432, paragraph (d) would be revised to remove the 120 day equipment installation requirement and would read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(d) Remote pickup system licensees will specify the minimum and maximum number of mobile units that may be operated within their system as follows: from 1 to 5 stations, from 4 to 12 stations, from 10 to 24 stations, from 20 to 50 stations, 45 or more stations (maximum to be specified on the license application).

* * * * *

3. In Section 74.433, paragraphs (a) and (e) would be revised to read as follows:

§ 74.433 Temporary authorizations.

(a) Part 73 licensees may operate remote pickup stations south of Line A or west of Line C (see definitions) on frequencies available pursuant to § 74.402 of this subpart which are not specified in a station or system authorization for a period of up to 30 days, continuous or aggregate on an annual basis, without specific authorization from the FCC. The limitation with respect to location shall not apply if the effective radiated power (ERP) of a station is not greater than 5 watts. All such operation shall be on a secondary, non-interference basis to regularly authorized operations; it shall conform with the provisions relating to permissible use set forth in § 74.431 of this subpart; it shall be subject to any conditions or limitations applicable to the use of a specific frequency or group of frequencies as indicated in § 74.402 of this subpart; and the antenna height (unless the station has been previously authorized to another licensee for use at a specific location) shall not increase the height of any type of man-made antenna supporting structure, or increase by more than 20 feet the height of any other type of man-made structure or natural formation. Special temporary authorization need by sought only in the following cases: where operation, continuous or aggregate on an annual basis, would exceed 30 days (where such operation is seen as likely on a continuing annual basis, an application for regular authorization should be submitted), where the antenna height would exceed the limits specified above, where operation of equipment not type accepted pursuant to § 74.451 is contemplated, or for operation of equipment of suitable design which has not been type accepted.

* * * * *

(e) When the transmitting equipment utilized is not licensed to the user, the user shall nevertheless have full control over the use of the equipment during the period it is operated.

* * * * *

4. In Section 74.482, paragraph (a) would be revised to read as follows:

§ 74.482 Station identification.

(a) Each remoter pickup broadcast station shall be identified by the transmission of the assigned station or system call sign, or by the call sign of the associated broadcast station. For systems, the licensee (including a Part 73-only licensee where operation takes place pursuant to § 74.433 of this subpart) shall assign a unit designator to each station in the system. The call sign (and unit designator, where appropriate) shall be transmitted at the beginning and end of each period of operation. A period of operation may consist of a single continuous transmission, or a series of intermitten transmissions pertaining to a single event.

* * * * *

5. A new Section 74.537 would be added to read as follows:

§ 74.537 Temporary authorizations.

(a) Part 73 licensees may operate aural broadcast STL or intercity relay stations at locations defined in paragraph (g) of this section on frequencies available pursuant to § 74.502 of this subpart which are not specified in a station authorization for a period of up to 30 days, continuous or aggregate on an annual basis, without specific authorization from the FCC. All such operation shall be on a secondary, non-interference basis to regularly authorized operations; it shall conform to the provisions relating to permissible use set forth in § 74.531 of this subpart; it shall conform to the modulation and frequency stability requirements indicated in § 74.502 of this subpart; and the antenna height (unless the station has been previously authorized to another licensee for use at a specific location) shall not increase the height of any man-made antenna supporting structure, or increase by more than 20 feet the height of any other type of man-made structure of natural formation. Special temporary authorization need be sought only in the following cases: where operation, continuous or aggregate on an annual basis, would exceed 30 days (where such operation is seen as likely on a continuing annual basis, an application for regular authorization should be submitted), or where the antenna height would exceed the limits specified above.

(b) A request for special temporary authorization for the operation of an aural broadcast STL or intercity relay station may be made by informal application, which shall be filed with the Commission at least 10 days prior to the date of the proposed operation. However, an application filed within less than 10 days of the proposed operation may be accepted upon a satisfactory showing of the reasons for the delay in submitting the request.

(c) An informal request for special temporary authorization shall be addressed to the FCC, Washington, D.C. 20554 and shall set forth full particulars including: licensee's name, call letters of the associated broadcast station(s), name and address of individual designated to receive the return authorization, call letters of the aural broadcast STL or intercity relay station, if assigned, type and manufacturer of equipment, power output, emission, frequency or frequencies proposed for use, commencement and termination date and location of the proposed operation, and purpose for which request is made including any particular justification. In the event that the proposed antenna installation will increase the height of any man-made antenna supporting structure, or increase by more than 20 feet the height of any other type of man-made structure or natural formation, a vertical plan sketch showing the height above ground of any existing structure, the elevation of the site above mean sea level, and the geographic coordinates of the proposed site, shall be submitted with the application.

(d) A request for special temporary authorization shall specify a frequency or frequencies consistent with the provisions of § 74.502 of this subpart. However, in the case of events of widespread interest and importance which cannot be transmitted successfully on these frequencies, frequencies assigned to other services may be requested upon a showing that operation thereon will not cause interference to established stations. In no case will operation of an aural broadcast STL or intercity relay station be authorized on frequencies employed for the safety of life or property.

(e) When the transmitting equipment utilized is not licensed to the user, the user shall nevertheless have full control over the use of the equipment during the period it is operated.

(f) Special temporary authorization to permit operation of aural broadcast STL or intercity relay stations or systems pending FCC action on an application for regular authority will not normally be granted.

(g) For operation pursuant to paragraph (a) of this section, a station must be at least 35 miles south (or west, as appropriate) of the United States-Canada border if the antenna looks within a 200° sector *toward* the border; or, the station must be at least 5 miles south (or west, as appropriate) if the antenna looks within a 160° sector *away* from the border. Operation pursuant to paragraph (a) of this sector is not permitted in either of the above situations if the proposed station would be within the coordinations distance of a receiving earth station in Canada which uses the same frequency band. (The coordination distance is the distance, calculated for any station, according to Recommendation 1A of the Final Acts of the EARC, Geneva, 1963.)

6. In Section 74.633, paragraph (a) would be revised and a new paragraph (e) would be added to read as follows:

§ 74.633 Temporary authorizations.

(a) Part 73 licensees may operate a TV auxiliary broadcast station (except at a location as defined in paragraph (e) of this section) on frequencies available pursuant to § 74.602 of this subpart which are not specified in a station or system authorization for a period of up to 30 days, continuous or aggregate on an annual basis, without specific authorization from the FCC. All such operation shall be on a secondary, non-interference basis to regularly authorized operations; it shall conform to the provisions relating to permissible use set forth in § 74.631 of this subpart; it shall be subject to any conditions or limitations applicable to the use of a specific frequency or group of frequencies as indicated in § 74.602 of this subpart; and the antenna height (unless the station has been previously authorized to another licensee for use at a specific location) shall not increase the height of any type of man-made antenna supporting structure, or increase by more than 20 feet the height of any other type of man-made structure or natural formation. Special temporary authorization need be sought only in the following cases: where operation, continuous or aggregate on an annual basis, would exceed 30 days (where such operation is seen as likely on a continuing annual basis, an application for regular authorization should be submitted), where the antenna height would exceed the limits specified above, or where the equipment to be utilized is of suitable design, but has not been previously licensed.

* * * * *

(e) Operation pursuant to paragraph (a) of this section is not permitted where a station would be within the coordination distance of a receiving earth station in Canada which uses the same frequency band. (The coordination distance is the distance, calculated for any station, according to Recommendation 1A of the Final Acts of the EARC, Geneva, 1963.)

7. In Section 74.832, paragraph (g) is revised to remove the 120 day equipment installation requirement and would read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(g) Low power auxiliary licenses will specify the minimum and maximum number of units that may be operated as follows: from 1 to 5 stations; from 4 to 12 stations; from 10 to 24 stations; from 20 to 50 stations; 45 or more stations.

* * * * *

8. In Section 74.833, paragraphs (a) and (e) would be revised to read as follows:

§ 74.833 Temporary authorizations.

(a) Part 73 licensees may operate low power auxiliary stations on frequencies available pursuant to § 74.802 of this subpart which are not specified in a station or system authorization for a period of up to 30 days, continuous or aggregate on an annual basis, without specific authorization from the FCC. All such operation shall be on a secondary, non-interference basis to regularly authorized operations; it shall conform with the provisions relating to permissible use set forth in § 74.831 of this subpart; and it shall be subject to any conditions or limitations applicable to the use of a specific frequency or group of frequencies as indicated in § 74.802 of this subpart. Special temporary authorization need be sought only in the following cases: where operation, continuous or aggregate on an annual basis, would exceed 30 days (where such operation is seen as likely on a continuing annual basis, an application for regular authorization should be submitted), where operation of equipment not type accepted pursuant to § 74.851 of this subpart is contemplated, or for operation of equipment of suitable design which has not been type accepted.

* * * * *

(e) When the transmitting equipment utilized is not licensed to the user, the user shall nevertheless have full control over the use of the equipment during the period it is operated.

* * * * *

[FR Doc. 81-24010 Filed 8-17-81; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1016

[Ex Parte No. 55 (Sub-No. 52)]

Special Procedures Governing Recovery of Expenses by Parties to Commission Adjudicatory Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing rules to implement the Equal Access to Justice Act. [Pub. L. 96-481, 94 Stat. 2325.] The Act requires Federal agencies to award attorney's fees and other expenses to certain parties who prevail over the Federal government in particular administrative proceedings. Under the legislation, each agency must issue rules establishing uniform procedures for the submission and consideration of applications for an award, after consulting with the Chairman of the Administrative Conference of the United States. Accordingly, the rules we are proposing for establishing procedures for making awards closely parallel model rules recently adopted by the Chairman of the Administrative Conference [46 FR 32900, June 25, 1981].

DATES: Comments should be filed on or before September 17, 1981.

ADDRESSES: Comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Armstrong, (202) 275-7034.

SUPPLEMENTARY INFORMATION:

Congress has determined that certain individuals and organizations may be deterred from seeking review of, or defending themselves against, unreasonable government actions in light of the costs of vindicating their rights in civil actions and administrative proceedings. As a solution to the problem, Congress passed the Equal Access to Justice Act (hereinafter called the Act). [Pub. L. 96-481, 94 Stat. 2325.] The Act provides that a Federal agency must award fees and other expenses to a prevailing party in an "adversary adjudication" before the agency, unless (1) the position of the agency as a party

to the proceeding was substantially justified or (2) special circumstances make an award unjust. 5 U.S.C. 504(a)(1). The Act defines "adversary adjudication" as a proceeding under section 554 of the Administrative Procedure Act, 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise. Congress specifically excluded from coverage of the Act adjudications to establish or fix a rate or grant or renew a license. 5 U.S.C. 504(b)(1)(C). The Act applies to adversary adjudications pending on October 1, 1981 and those commenced on that date and afterwards until the expiration of the legislation on October 1, 1984. Parties eligible for awards under the Act are limited according to their net worth and/or number of employees.

Each agency is required under the Act to issue rules which establish uniform procedures for the submission and consideration of applications for an award after consulting with the Chairman of the Administrative Conference of the United States. To facilitate this process the Chairman of the Administrative Conference has recently adopted model rules for the implementation of the Act [46 FR 32900, June 25, 1981]. While recognizing that rules implementing the Act may necessarily vary from agency to agency, the Chairman of the Administrative Conference strongly encourages all agencies to employ the model rules to the greatest extent possible. Since the Act applies to all Federal agencies, uniform implementation could reduce potential confusion and interpretation problems and could affect the amount of deference a reviewing court accords an agency's actions under its rules. Accordingly, we are proposing rules which, for the most part, are identical to the model rules.

In the discussion which follows we will not repeat the detailed reasoning or explanation for the model rules given by the Chairman of the Administrative Conference in his notice proposing the rules (46 FR 15895, March 10, 1981) and adopting them (46 FR 32900, June 25, 1981). For the rules we are proposing which merely mirror the model rules, we adopt the reasoning and explanation of the Chairman of the Administrative Conference set out in those notices. We will discuss substantive changes in our proposed rules and other noteworthy departures from the model rules. Our proposed rules (as do the model rules) consist of three subparts. We will discuss the changes in each subpart separately.

Subpart A—General Provisions

Subpart A contains nine sections which, like the model rules, set forth the purpose of the Act; the period of time it is in effect; the administrative proceedings covered by the Act; the assignment of responsibility for making an award under the Act; the parties eligible to seek an award; standards for making an award; what fees and expenses parties may recover under the Act; procedures for having the limits on awards increased; and the availability of awards against other agencies which participate in Commission proceedings covered by the Act. We have made several changes and clarifications in adapting the model rules for this subpart to our use.

Section 1016.101 states the purpose of the rules. In this section and throughout the remaining proposed rules, we are substituting the term "Interstate Commerce Commission" or "Commission" for the term "agency" where appropriate to make the rules more specific. Also, we are modifying this section to reflect the fact that awards may be made against other Federal agencies besides the Commission which participate in Commission proceedings otherwise subject to the Act.

Section 1016.103 sets forth what Commission proceedings are covered by the Act. We are adding the term '[hereinafter "agency counsel"]' to § 1016.103(a) after the phrase "presented by an attorney or other representative". This insertion explains the meaning of the term "agency counsel" which frequently appears in the rules. We prefer to use the broad term "agency counsel" because of its flexibility. Since various agencies may participate in adjudicatory proceedings conducted by the Commission under 5 U.S.C. 554, we must use a term broad enough to include such agencies. Also, even though our Office of Consumer Protection is the only Commission unit we believe would now constitute an "agency counsel" for purposes of the Act, the situation could change numerous times during the life of the Act. For these reasons, we choose to use the general term "agency counsel" and will not attempt to list all the agencies and agency units which may be covered by the term as suggested by the Chairman of the Administrative Conference.

As a related matter, we recognize that our Office of Special Counsel may make appearances and participate in adjudications before the Commission under 5 U.S.C. 554 as well as in other proceedings. However, it participates solely to represent the public interest, to help develop the record accordingly, and to assist members of the public participating in Commission proceedings. As such, we do not believe that the Office of Special Counsel is representing the "position of the United States" within the meaning of the Act [5 U.S.C. 504(b)(1)(C)] thereby qualifying a proceeding as an "adversary adjudication" subject to award provisions.

The Chairman of the Administrative Conference has suggested that each agency add a list of covered proceedings at the end of what will be our § 1016.103(a) when issuing its own rules implementing the Act. Rather than attempt to list every conceivable proceeding which could become subject to the provisions of the Act, we are listing those proceedings which we believe will constitute a great majority, if not all, of actual Commission adjudications which will be covered by the Act. We believe the coverage of the Act is made sufficiently clear in § 1016.103(a) and that the inclusion of potential proceedings is unwarranted where the probability of their occurrence is quite low. This approach is made possible by § 1016.103(b) which provides for procedures for the designation of any other proceeding as one subject to the Act. Furthermore, where there is any doubt about coverage, we think the issue should be handled on a case-by-case basis under § 1016.103(b). Finally, we have clarified the provisions for designating a proceeding as being subject to the Act by providing that the designation may be made at any time during the proceeding. We believe this was the intent of the model rules and merely amounts to a clarification. It appears in § 1016.103(b).

The proceedings which we have included in § 1016.103(a) as generally being covered by the Act are investigation proceedings instituted under 49 U.S.C. 11701 and 49 U.S.C. 10925 and disciplinary proceedings conducted pursuant to 49 CFR 1100.11. As previously mentioned, the legislation specifically exempts ratemaking proceedings and proceedings for the purpose of granting or renewing a license. Because of this latter exemption, adjudications in which our Office of Consumer Protection participates to challenge an applicant's fitness in application proceedings for operating authority under 49 U.S.C. 10922, 10923 and 10924 are not subject to the Act. Similarly, we do not believe that proceedings for the transfer of operating rights under 49 U.S.C. 10926 or acquisition proceedings under 49 U.S.C.

11344 are made subject to the Act when our Office of Consumer Protection participates by instituting a fitness challenge. Each of these types of adjudication ultimately concerns "licensing" to the extent that each involves the acquisition of, or control over, operating rights. Therefore, we feel that each type of adjudication is exempt from the Act when the only basis for its being subject to the Act is a fitness challenge by our Office of Consumer Protection or other agency counsel.

In our proposed rules we have included a new section (§ 1016.104) setting forth the decisionmaking authority over an application for an award under the Act. Unless the Commission orders otherwise in a proceeding, the official or decisionmaking body which entered the initial decision on the underlying adjudication will be assigned to make an initial decision on the application for an award. That decisionmaker constitutes the "adjudicatory officer", a term used throughout the remaining rules. This new section replaces § 0.109 of the model rules which dealt with delegations of authority to agency officials to make decisions on applications for awards. For our purposes, this section should be located at § 1016.104 since it identifies the term "adjudicatory officer" which appears in the following section. Also, we have worded our rules so that the responsibility for deciding an award application is upon the same decisionmaker as made the initial decision. We have, therefore, covered the situation where one official presides at the adjudicatory hearing but another makes the decision. We feel the latter official is the appropriate one to decide an application for an award under the Act.

In § 1016.105(a) of our proposed rules, we have revised § 0.104 of the model rules concerning the eligibility of parties to file for an award. We want to make it clear that to be eligible to file for an award, a party must have stood in an adversary relationship to the position taken by agency counsel and must have prevailed on one or more of the issues raised by agency counsel. This revision is entirely consistent with the purposes of the Act and constitutes no more than a clarification.

We are expanding the definition of employees set out in the model rules to cover specifically the situation where applicants for an award use owner-operators as independent contractors and where applicants are motor carriers of household goods and use agents in their operations. We propose in § 1016.105 that neither independent contractors nor agents of household goods carriers be considered as employees for the purpose of determining an applicant's eligibility under the Act. Comments are especially invited on this proposal.

The last revision to the model rules in subpart A which we are proposing concerns the rules on instituting rulemaking proceedings to raise the maximum rate for attorney's fees which a party may recover. In § 1016.108, we revise the model rules by making controlling where appropriate the rules which we have already adopted at 49 CFR Part 1103 which govern generally the institution of rulemaking proceedings. Also, we have deleted § 0.107)(a) of the model rules as being redundant since it is covered by the Act and our proposed rules at § 1016.108.

Subpart B—Information Required From Applicants

Subpart B of our proposed rules contains the informational requirements for applications for awards under the Act. Our subpart B consists of three sections which set forth rules concerning the contents of an aplication for an award, the net worth exhibit required for determining eligibility under the Act, and required documentation of the fees and expenses an applicant is seeking to recover. These sections are practically identical to those in the model rules except we do make a cross-reference in § 1016.202(b) to our rules governing the inspection of records under the Freedom of Information Act. However, our proposed rules do differ with subpart B of the model rules in that we propose to include the rules setting forth when an application for an award may be filed as the first section in subpart C [§ 1016.301]. We believe these rules belong in subpart C which contains other procedural rules for considering applications. Specific changes in these rules will be discussed below.

Subpart C—Procedures for Considering Applications

Subpart C of our proposed rules, like the model rules, contains regulations regarding procedures for considering applications. Both sets of rules contain sections on the filing and service of documents in award proceedings; the filing of answers and replies and comments by other parties; settlement procedures; procedures for further hearings or other proceedings in an award proceeding; the issuance of a decision; agency and judicial review of the decision; and payment of an award.

As discussed above, the first section we are proposing for subpart C corresponds to the last section of the model rules in subpart B. In our proposed rules, which appear at § 1016.301, we revise the language of the model rules to make clear that an award application must be filed within 30 days of an administratively final decision in the underlying proceeding. Furthermore, for the purposes of determining when a proceeding is administratively final, we include in the section a reference to our rules governing appellate procedures at 49 CFR 1100.98 and delete the provisions in the model rules for making this determination.

The remaining changes in our proposed rules from the model rules in subpart C involve no more than filling in blanks purposely left in the model rules. The more important of these involve the number of days after completion of any award proceeding for an initial decision to be issued (we propose 50 days in § 1016.308); the number of days before an initial decision in an award proceeding becomes a final decision where neither party has sought review and the Commission fails to review the matter on its own initiative (we propose 20 days in § 1016.309); and the address for submissions for payment after a final Commission decision granting an award (we propose the Secretary of the Commission in § 1016.311).

Summary

We propose to adopt the rules set forth in the Appendix to this decision. We invite public comments on all aspects of the proposed rules, especially those which differ from the model rules.

We certify pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities. The rules merely implement the Equal Access to Justice Act and do not themselves impose significant economic burdens or benefits.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources.

This action is taken under the authority of 49 U.S.C. 10321, 5 U.S.C. 504(c)(1) and 5 U.S.C. 553.

Decided: August 11, 1981.

By the Commission. Chairman Taylor, Commissioners Gresham, Clapp, Trantum, and Gilliam. Commissioner Trantum did not participate.

Agatha L. Mergenovich,

Secretary.

Appendix

We propose to add a new Part 1016 to Title 49 of the Code of Federal Regulations as follows:

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO COMMISSION ADJUDICATORY PROCEEDINGS

Subpart A—General Provisions.

Sec.
1016.101 Purpose of these rules.
1016.102 When the Act applies.
1016.103 Proceedings covered.
1016.104 Decisionmaking authority.
1016.105 Eligibility of applicants.
1016.106 Standards for awards.
1016.107 Allowable fees and expenses.
1016.108 Rulemaking on maximum rates for attorney fees.
1016.109 Awards against other agencies.

Subpart B—Information Required From Applicants

1016.201 Contents of application.
1016.202 Net worth exhibit.
1016.203 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

1016.301 When an application may be filed.
1016.302 Filing and service of documents.
1016.303 Answer to application.
1016.304 Reply.
1016.305 Comments by other parties.
1016.306 Settlement.
1016.307 Further proceedings.
1016.308 Decision.
1016.309 Agency review.
1016.310 Judicial review.
1016.311 Payment of award.

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 [5 U.S.C. 504(c)(1)], 5 U.S.C. 553, and 49 U.S.C. 10321.

Subpart A—General Provisions

§ 1016.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called the "Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Interstate Commerce Commission. An eligible party may receive an award when it prevails over the Commission or another agency of the United States participating in the Commission proceeding, unless the Commission's position in the proceeding, or that of the other agency, was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 1016.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 1016.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative [hereinafter "agency counsel"] who enters an appearance and participates in the proceeding. Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." Generally, the types of Commission proceedings covered by the Act include, but are not limited to, investigation proceedings instituted under 49 U.S.C. 11701 and 49 U.S.C. 10925 and disciplinary proceedings conducted pursuant to 49 CFR 1100.11.

(b) The Commission may also designate a proceeding not listed in paragraph (a) as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding, designating the matter for hearing or at any other time during the proceeding. The Commission's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1016.104 Decisionmaking authority.

Unless otherwise ordered by the Commission in a particular proceeding, each application for an award under this part shall be assigned for an initial decision to the official or decisionmaking body that entered the initial decision in the adversary adjudication. That official or decisionmaking body is referred to in this part as the "adjudicatory officer."

§ 1016.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award that stood in an adversary relationship to the position taken by agency counsel, and it must have prevailed on one or more of the issues raised by agency counsel. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis. Independent contractors under lease to motor carriers are not employees of the carriers under these rules. Also, agents for motor common carriers of household goods are not employees of their respective principal carriers.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual,

corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1016.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceedings, unless the position of the agency over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency counsel, which may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1016.107 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses [which is currently $24.09 per hour]. However, an award may also include the reasonable expenses of the attorney, agency, or witness as a separate item, if the attorney, agent of witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the similar services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1016.108 Rulemaking on maximum rates for attorney fees.

Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees in accordance with our rules appearing at 49 CFR Part 1103. Notwithstanding the requirements of Part 1103, the petition shall identify the rate the petitioner believes the Commission should establish and the types of proceedings in which the rate shall be used. It should also explain fully the reasons why the higher rate is warranted.

§ 1016.109 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before this agency and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 1016.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1016.202 New worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1016.105(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit

directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures governing the inspection of records which are set forth in 49 CFR Part 1001.

§ 1016.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

Subpart C—Procedures for Considering Applications

§ 1016.301 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after an administratively final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, see the Commission's rules governing appellate procedures at 49 CFR 1100.98 to determine when a decision becomes administratively final.

§ 1016.302 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1016.202(b) for confidential financial information.

§ 1016.303 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1016.307.

§ 1016.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1016.307.

§ 1016.305 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1016.306 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on an proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1016.307 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1016.308 Decision.

The adjudicative officer shall issue an initial decision on the application within 50 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's or other agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the

decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1016.309 Agency review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with its appellate procedures which appear at 49 CFR 1100.98. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency 20 days after is is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 1016.310 Judicial review.

Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1016.311 Payment of award.

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Interstate Commerce Commission the applicant shall make its submission to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. The Commission will pay the amount awarded to the applicant within 60 days of the applicant's submission unless the judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[FR Doc. 81-24018 Filed 8-14-81; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1047

[No. 38622]

Petition of New Jersey Transit Corporation to Exempt Mass Transportation Services

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of time for filing comments.

SUMMARY: By notice of proposed rulemaking published in the **Federal Register** July 15, 1981 (46 FR 36721), the Commission proposed to grant New Jersey Transit Corporation, et al. a partial exemption under 49 U.S.C. 1608 (f) regarding rate and service matters. Comments were due on August 14, 1981, 30 days from **Federal Register** publication. The American Bus Association has requested an extension to file comments in this proceeding to August 18, 1981. This brief exemption shall be granted. It will enable parties to file more representative comments which will be of greater benefit to the Commission in making a determination on the proposed exemption.

DATE: Comments are now due August 18, 1981.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall (202) 275-7656.

Decided: August 13, 1981.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-24074 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 46, No. 159
Tuesday, August 18, 1981

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

Commodity Credit Corporation

Determination; 1981 Virginia Fire-Cured (Type 21) Tobacco, Price Support Rates

AGENCY: Commodity Credit Corporation.

ACTION: Notice of Determination of 1981 Virginia fire-cured (type 21) tobacco price support rates.

SUMMARY: This notice of determination sets forth the price support rates applicable to eligible grades of 1981-crop Virginia fire-cured tobacco tied in hands. The support rates have been determined in order to make price support available to eligible producers on such grades, as required by the Agricultural Act of 1949, as amended. Price support also will be made available at reduced rates for certain down-stalk grades in untied form.

DATE: Effective August 19, 1981.

ADDRESS: Director, Price Support and Loan Division, ASCS, USDA, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, ASCS, (202) 447-6733. The Final Impact Statement which describes the options considered in developing this Notice of Determination and the impact of implementing each option is available from Mr. Tarczy.

SUPPLEMENTARY INFORMATION: This Notice of Determination has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classifed "not major." It has been determined that these program provisions will not result in an annual effect on the economy of $1 million or more.

It has been determined that the Regulatory Flexiblity Act is not applicable to this Notice of Determination since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish such determination as a Notice of Proposed Rulemaking.

The title and number of the federal assistance program to which this notice applies are: Title: Commodity Loan and Purchases; Number: 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by Office of Management and Budget (OMB) Circular A-95 was not used to assure that units of local government are informed of this action.

Harold L. Jamison, Director, Price Support and Loan Division, Agricultural Stabilization and Conservation Service, has determined that an emergency situation exists which warrants publication of this Notice of Determination without opportunity for public comment. Growers of Virginia fire-cured tobacco need to know immediately the support rates applicable to 1981 crop Virginia fire-cured tobacco so they can make plans with respect to the marketing of their tobacco.

Price support for Virginia fire-cured tobacco is made available each year by Commodity Credit Corporation (CCC) through a cooperative marketing association. Price support is mandatory at the level of support determined in accordance with the formula prescribed by section 106 of the Agricultural Act of 1949, as amended. Section 106 provides that the level of support for the 1981 crop of tobacco is to be determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers for the three calendar years 1978-80 (which is 851) to the average index of prices paid by farmers for the 1959 calendar year (which is 298). The resulting ratio is 2.86. The support level for the 1981 crop of each eligible kind of tobacco is, therefore, 286 percent of the 1959 level. The support rates determined by the Secretary for the various grades of 1981 crop Virginia fire-cured tobacco reflect this required level of support.

Traditionally, fired-cured tobacco has been marketed tied in hands. This process helps retain the quality of the tobacco, but is expensive, costing 12 to 15 cents per pound to tie.

There are two distinct markets for Virginia fire-cured tobacco: The better quality tobacco is exported while the lesser quality tobacco is ground and used domestically as snuff. Higher premiums are paid for good quality tobacco but not for the poorer quality tobacco. In order to satisfy both the export and domestic markets, CCC will offer price support in both tied and untied form for the eleven grades XI5L, X5F, X5D, X5M, X5M 45, X5G, X5G 45, NIL, NID, NIGL, and NIGD beginning with the 1981-crop of Virginia fire-cured tobacco. However, price support will not be available on other grades marketed in untied form.

In addition, since the demand for these eleven grades is weak and because it costs approximatley 10 cents per pound extra to process (redry) fired-cured tobacco in untied form, the support rates for the eleven grades will be discounted by 10 cents per pound if such grades are marketed in untied form.

Determinations

Accordingly, the Secretary has determined that support rates will be in effect for 1981-crop fire-cured (type 21) tobacco as follows:

Support Rates

[Dollars per hundred pounds, farm sales weight]

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
A1F	181	181	181		
A2F	173	174	174		
A1D	181	181	181		
A2D	174	174	174		
B1F	176	176	176		
B2F	166	166	166	160	
B3F	149	149	149	144	95
B4F	136	136	136	134	85
B5F	107	107	107	105	79
B1D	176	176	176		
B2D	166	166	166	160	
B3D	136	151	151	146	87
B4D	138	138	138	136	88
B5D	107	107	107	104	79
B3M	113	117	117	111	86
B4M	106	111	111	101	84
B5M	96	97	97	97	76
B3G	115	117	118	111	80
B4G	104	106	106	105	80
B5G	91	97	97	91	69
C1L	181	181	181		
C2L	173	173	173	161	
C3L	151	151	151	146	
C4L	138	138	138	136	
C5L	107	107	107	105	
C1F	181	181	181		
C2F	173	173	173	161	
C3F	149	149	149	144	
C4F	136	136	136	134	
C5F	107	107	107	105	
C2D	106	106	101	104	
C3D	100	101	102	96	
C4D	86	89	91	85	
C5D	76	77	78	77	
C3M	114	116	117	112	
C4M	108	110	111	108	
C5M	85	87	89	86	

Support Rates—Continued

(Dollars per hundred pounds, farm sales weight)

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
C3G	98	96	101	91	
C4G	87	86	90	85	
C5G	75	78	81	77	

Grade	Support rates
X1L	119
X2L	118
X3L	115
X4L	107
X5L	[1] 91
X1F	119
X2F	118
X3F	115
X4F	107
X5F	[1] 91
X1D	119
X2D	117
X3D	111
X4D	96
X5D	[1] 86
X3M	99
X3M 45	93
X4M	87
X4M 45	78
X5M	[1] 67
X5M 45X	[1] 66
X3G	100
X3G 45	94
X4G	87
X4G 45	79
X5G	[1] 71
X5G 45	[1] 66
N1L	[1] 51
N1D	[1] 48
N1GL	[1] 20
N1DG	[1] 51
N2	[2]

[1] The grades X5L, X5F, X5D, X5M, X5M 45, S5G, S5G 45, N1L, N1D, N1GL and N1GD will be supported 10 cents lower than the stated rate if marketed in untied form. No other grades will be supported in untied form.

[2] N2 is not eligible for price support.

Note.—Only the original producer is eligible to receive advances. Tobacco graded "U" (unsound), "No-G" (no grade), "W" (doubtful keeping order), or scrap will not be accepted. The association through which advances are made is authorized to deduct $1 per hundred pounds to apply against overhead costs.

Secs. 4 and 5, 62 Stat. 1070 as amended (15 U.S.C. 714b, 714c); secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, 74 Stat. 6 (7 U.S.C. 1441, 1445, 1421, 1423)

Signed at Washington, D.C. on August 13, 1981.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-24100 Filed 8-18-81; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

National School Lunch Program and School Breakfast Program; National Average Payments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces changes in the "national average payments", the amounts of money the Federal government gives States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs. This notice also announces changes in the "maximum reimbursement rates," the maximum amounts of money a State can provide its School Food Authorities for lunches or breakfasts served to children participating in the lunch and breakfast programs. These revised rates are in effect from July 1, 1981 through September 30, 1981. These changes are required by law to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: James C. O'Donnell, Acting Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-9069.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has not been classified as major because it does not meet any of the three criteria of the Executive Order. The notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete. This notice updates the national average payments and maximum rates of reimbursements to reflect changes in the Consumer Price Index.

This notice has also been reviewed with regard to the requirements of Public Law 96-354. G. William Hoagland, Administrator of the Food and Nutrition Service, has certified that this notice does not have a significant economic impact on a substantial number of small entities.

Background

The Secretary is required, by law, to prescribe adjustments in the national average payment rates and the maximum rates of reimbursement for lunches served under Section 4 and Section 11 of the National School Lunch Act (Act). Section 4 of the Act provides general cash for food assistance payments to assist schools in financing the cost of obtaining food. This assistance is provided for all lunches. To supplement these Section 4 payments, Section 11 of the Act provides special cash assistance payments to assist schools in financing free and reduced price lunches. The Secretary is also required to prescribe adjustments in the national average payment factors and severe need payment factors for breakfasts served under Section 4 of the Child Nutrition Act of 1966.

These adjustments reflect changes in the cost of operating the National School Lunch Program and the School Breakfast Program as indicated by a change in the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. The changes in the Index cover the period May 1980 to May 1981. An increase in the Index of 9.3 percent is reflected in these adjustments. The payments and rates for Alaska and Hawaii are higher than those for other States due to a higher cost of living.

Lunch payments and maximum rates are based on the percentage of free and reduced priced eligible children served lunch in a School Food Authority in the second preceding year. If a School Food Authority served 60 percent or more of its lunches free or at reduced price in the second preceding year, in this case, school year 1979-80, the payments and rates are higher than those for School Food Authorities serving less than 60 percent of their lunches free or at a reduced price.

The national average payment factors are applied to breakfasts served to eligible children in schools not in severe need. A higher payment is applied to breakfasts served to children eligible for free and reduced price breakfasts in schools determined to be in severe need. A State agency may not pay its School Food Authorities a rate of reimbursement for the breakfast program that is higher than (1) the national average payments for a school not in severe need and (2) the severe need payment for a school in severe need.

The following tables identify the national average payments and maximum rates of reimbursement expressed in dollars or fractions thereof and separated out for the lunch and breakfast programs.

United States Except Alaska and Hawaii—National Average Payments [1]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
General Cash for Food Assistance (Sec. 4)	0.2025	0.2025	0.2025
Special Assistance (Sec. 11)	[3]	.7150	.9150
Total	.2025	.9175	1.1175
Less than 60 percent free or reduced:			
General Cash (Sec. 4)	.1775	.1775	.1775
Special Assistance (Sec. 11)	[3]	.7150	.9150

United States Except Alaska and Hawaii—National Average Payments [1]—Continued

	Paid	Reduced price	Free
Total	.1775	.8925	1.0925

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

United States Except Alaska and Hawaii—Maximum Rates of Reimbursement [1]

[The maximum reimbursement a School Food Authority may receive per lunch from the State agency]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
Section 4	0.2625	([3])	([3])
Sections 4 and 11	([3])	1.0675	1.2675
Less than 60 percent free or reduced:			
Section 4	.2625	([3])	([3])
Sections 4 and 11	([3])	1.0675	1.2675

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

United States Except Alaska and Hawaii—National Average Payments and Severe Need Payments [1]

	Paid	Reduced price	Free
School not in severe need	0.1625	0.4675	0.5700
School in severe need	.1625	.6350	.6850

[1] Breakfast.

Alaska—National Average Payments [1]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
General Cash for Food Assistance (Sec. 4)	0.3300	0.3300	0.3300
Special Assistance (Sec. 11)	([3])	1.2800	1.4800
Total	.3300	1.6100	1.8100
Less than 60 percent free or reduced:			
General Cash for Food Assistance (Sec. 4)	.3050	.3050	.3050
Special Assistance (Sec. 11)	([3])	1.2800	1.4800
Total	.3050	1.5850	1.7850

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

Alaska—Maximum Rates of Reimbursement [1]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
Section 4	0.4250	([3])	([3])
Sections 4 and 11	([3])	1.6525	2.0525

Alaska—Maximum Rates of Reimbursement [1]—Continued

	Paid	Reduced price	Free
Less than 60 percent free or reduced:			
Section 4	.4250	([3])	([3])
Sections 4 and 11	([3])	1.8525	2.0525

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

Alaska—National Average Payments and Severe Need Payments [1]

	Paid	Reduced price	Free
Schools not in severe need	0.2625	0.7550	0.9200
School in severe need	.2625	1.06	1.11

[1] Breakfast.

Hawaii—National Average Payments [1]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
General Cash for Food Assistance (Sec. 4)	0.2375	0.2375	0.2375
Special Assistance (Sec. 11)	([3])	.87	1.07
Total	.2375	1.1075	1.3075
Less than 60 percent free or reduced:			
General Cash for Food Assistance (Sec. 4)	.2125	.2125	.2125
Special Assistance (Sec. 11)	([3])	.87	1.07
Total	.2125	1.0625	1.2825

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

Hawaii—Maximum Rates of Reimbursement [1]

	Paid	Reduced price	Free
60 percent or more free or reduced: [2]			
Section 4	0.3075	([3])	([3])
Sections 4 and 11	([3])	1.2625	1.4625
Less than 60 percent free or reduced:			
Section 4	.3075	([3])	([3])
Sections 4 and 11	([3])	1.2625	1.4825

[1] Lunch.
[2] The 60-percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.
[3] Not available.

Hawaii—National Average Payments and Severe Need Payments [1]

	Paid	Reduced price	Free
School not in severe need	0.019	0.5475	0.6650
Schools in severe need	.19	.7525	.8025

[1] Breakfast.

*The 60 percent criteria for higher payments or rates is based on lunches served in a School Food Authority in school year 1979–80.

(Catalog of Federal Domestic Assistance Program Nos. 10.553 and 10.555)

(Sec. 4, Pub. L. 92–433, 76 Stat. 944, 80 Stat. 886, 84 Stat. 208, 60 Stat. 231, 232, Sec. 2 and 4, Pub. L. 93–150, 86 Stat. 725, 726, 729, (42 U.S.C. 1752, 1753, 1754, 1757, 1773, 1777))

Signed in Washington, D.C. on August 10, 1981.

G. William Hoagland,

Administrator, Food and Nutrition Service.

[FR Doc. 81-23950 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-30

Special Milk Program for Children; Milk Reimbursement Rate

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the rate of reimbursement for a half-pint of milk service to nonneedy children in a school or institution which participates in *only* the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk. The change in rate will affect the amount of Federal money shcools and institutions receive. This notice also reminds interested parties of the two other existing rates in the Special Milk Program.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, Acting Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–9069.

SUPPLEMENTARY INFORMATION:

Classification: This Notice has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria of the Executive Order. This Notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete. This Notice simply adjusts one of the Special Milk Program rates of reimbursement to reflect changes in the Producer Price Index for Fresh Processed Milk.

This Notice has also been reviewed with regard to the requirements of Pub. L. 96–354. G. William Hoagland, Administrator of the Food and Nutrition Service, has certified that this Notice does not have a significant economic

impact on a substantial number of small entities.

For the period July 1, 1981 to June 30, 1982, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in *only* the Special Milk Program is *9.0* cents. The 9.0 cents rate represents a 5.9 percent increase over the old rate based on a change in the Producer Price Index for Fresh Processed Milk during the period May 1980 to May 1981.

As a reminder: 1) Schools or institutions with pricing programs, which elect to serve milk free to eligible children, continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child; and 2) Schools or institutions that participate in the Special Milk Program *and* one or more of the other Food and Nutrition Service meal programs (the National School Lunch Program, School Breakfast Program, Child Care Food Program, or the Summer Food Service Program for Children) continue to receive *5.0* cents for each half-pint of milk served to children not eligible for free milk.

(Catalog of Federal Domestic Assistance Program No. 10.556)

Section 3 of the Child Nutrition Act, as amended (42 U.S.C. 1772)

Signed in Washington, D.C. on: August 10, 1981.

G. William Hoagland,

Administrator, Food and Nutrition Service.

[FR Doc. 81-23951 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Lewis and Clark National Forest Grazing Advisory Board; Meeting

The Lewis and Clark National Forest Grazing Advisory Board will hole their fall meeting on Monday, September 14, 1981, according to Forest Supervisor John D. Goarman. The location of the meeting is the Kings Hill Summit, about 30 miles northeast of White Sulphur Springs and 67 miles southeast of Great Falls, Montana, on U.S. Highway 89. A business meeting at 9:30 a.m. is to be followed by a field tour. The field tour will start at the Kings Hill Summit at 11:30 a.m. and terminate at the same location about 4:30 p.m. The tour route will follow Forest roads along the Little Belt Divide toward Yogo Peak and/or Lost Fork Ridge. The purpose of the tour is to show the Board the project area involved in the Little Belt Divide Grazing Study. Twelve sheep allotments encompassing about 133,000 acres are included in this study.

The purpose of the business meeting, preceding the field tour, is to review the Lewis and Clark National Forest's range improvement and allotment management planning programs. The District Rangers will present to the Board their 1981 accomplishments and their plans for fiscal year 1982 at this meeting.

The public is invited to attend the meeting and/or the field tour. Persons or orgnizations wishing to attend should contact the Board Chairman, Elmer Hanson at Riverside Ranch Co., P.O. Box 529, White Sulphur Springs, MT 59645, (phone 406/547-3497); or the acting board secretary, Wayne Phillips, Lewis and Clark National Forest, Box 871, Great Falls, MT 59403, (phone 406/453-7678).

Dated: July 22, 1981.

John D. Gorman,

Forest Supervisor.

[FR Doc. 81-24082 Filed 8-17-81; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Deputy Administrator et al.; Delegation of Authority

Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) and paragraphs 2.7 and 2.72, Title 7, Code of Federal Regulations, the following delegations of authority are made by the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

1. The Deputy Administrator, or the Acting Deputy Administrator, of the Rural Electrification Administration is delegated authority, to be exercised only during the absence or unavailability of the Administrator, to perform all the duties and exercise all the powers which are now, or which may hereafter be delegated to the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank.

2. The Special Assistant to the Administrator; the Assistant to the Administrator for Administration; the Assistant Administrator, Electric; the Assistant Administrator, Telephone; and any officer of the Rural Electrification Administration designated in writing by the Administrator, Deputy Administrator, or Acting Deputy Administrator, in the order listed, are authorized to serve as Acting Deputy Administrator during the absence or unavailability of the Deputy Administrator, and as Acting Deputy Governor of the Rural Telephone Bank during the absence or unavailability of the Deputy Governor, or during vacancies in such offices.

These delegations shall be effective immediately, and supersede all other delegations in conflict herewith.

Dated: August 6, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration, Governor, Rural Telephone Bank.

[FR Doc. 81-24285 Filed 8-17-81; 11:25 am]

BILLING CODE 3410-15-M

Magic Valley Electric Cooperative, Inc.; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Finding of No Significant Impact which concludes that there is no need for REA to prepare an environmental impact statement in connection with proposed financing assistance by REA for Magic Valley Electric Cooperative, Inc. (Magic Valley), of Mercedes, Texas. The proposed financing assistance will be used by Magic Valley for the construction of 70 miles (113 km) of 138 kV transmission line and associated substation facilities.

The proposed transmission line will extend from a terminal switching station adjacent to an existing 138 kV line southeast of Raymondville to an existing substation northwest of Edinburg. Associated substation construction will include the switching station and eight distribution stations and 19.2 miles (30.9 km) of 7.2/12.5 kV feeder lines. The construction will take place in Hidalgo, Cameron and Willacy Counties, Texas. Magic Valley has prepared a Borrower's Environmental Report (BER) concerning the proposed project. An Environmental Assessment was prepared by REA.

Threatened and endangered species, important farmlands, archaeological and historic sites, wetlands and floodplains, and other potential impacts of the proposed project are adequately considered in Magic Valley's BER and REA's Environmental Assessment.

REA's independent evaluation of the Project leads it to conclude that its proposed financing assistance for this project does not represent a major Federal action that will significantly affect the quality of the human environment.

Based on this independent evaluation, REA's Environmental Assessment, and a review of Magic Valley's Borrower's Environmental Report, a Finding of No Significant Impact was reached in accordance with Sections IV.B and

IV.D.1 of REA Bulletin 20–21:320–21, Part I.

Various alternatives to the proposed transmission line and substations were reviewed by Magic Valley and REA. The alternatives include no action, energy conservation, alternative routes, and alternative construction methods. The proposed transmission line and associated substation construction is the most viable alternative to deliver power to all existing and future loads of Magic Valley within the project area.

Copies of REA's Finding of No Significant Impact, REA's Environmental Assessment and Magic Valley's Borrower's Environmental Report may be obtained from or reviewed in the office of the Director, Distribution Systems Division, Room 3306, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, or may be reviewed at the office of Magic Valley Electric Cooperative, Inc., P.O. Box 267, Mercedes, Texas 78570.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 7th day of August, 1981.

Harold V. Hunter,

Administrator, Rural Electrification Administration.

[FR Doc. 81-23643 Filed 8-17-81; 11:24 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Application for an All-Cargo Air Service Certificate

August 12, 1981.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 8, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 39889, from Orion Air, Inc., P.O. Box 2809, Chapel Hill, North Carolina 27514, or an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before September 8, 1981. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-24055 Filed 8-17-81; 8:45 am]

BILLING CODE 6320-01-M

Application for an All-Cargo Air Service Certificate

August 12, 1981.

In accordance with Part 291 (14 CFR 291) of the Board's Economic Regulations (effective November 8, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 39883, from Jet Charter Service, Inc., 1150 N.W. 72nd Avenue, Miami, Florida 33126, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before September 8, 1981. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-24056 Filed 8-17-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-8-80]

Application of Sky West for Removal of Certificate Condition Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 81-8-80 application of Sky West under Subpart Q for removal of certificate condition, Docket 39042.

SUMMARY: The Board is proposing to amend the certificate of public convenience and necessity of Sky West to remove the condition that limits the amount of subsidy payable to Sky West for service to Page and Cedar City. The complete text of this order is available, as noted below.

DATES: Objections: All interested persons having objections to the Board's amending Sky West's certificate to remove the condition limiting the carrier's subsidy shall file and serve upon all persons listed below no later than August 24, 1981, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 39042, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428 and served upon all persons listed in paragraph 6 of Order 81-8-80.

FOR FURTHER INFORMATION CONTACT: Thomas Chew, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5056.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-8-80 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a post card request for Order 81-8-80 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 13, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-24064 Filed 8-17-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-8-75]

Fitness Determination of Mountain Home Air Service, Inc.; d.b.a. Arkansas Traveler Airline

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 81-8-75, Order to Show Cause.

SUMMARY: The Board is proposing to find that Mountain Home Air Service, Inc. d.b.a. Arkansas Traveler Airline is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than September 1, 1981, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESS: Responses or additional data should be filed with Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with

all persons listed in Attachment A of Order 81–8–75.

FOR FURTHER INFORMATION CONTACT: Mr. John McCamant, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673–5082.

SUPPLEMENTARY INFORMATION: The complete text of Order 81–8–75 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81–8–75 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 13, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81–24052 Filed 8–17–81; 8:45 am]

BILLING CODE 6320–01–M

[Order 81–8–76]

Fitness Determination of Valley Flying Services, Inc.; d.b.a. Valley Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 81–8–76, Order to Show Cause.

SUMMARY: The Board is proposing to find that Valley Flying Services, Inc. d.b.a. Valley Airlines is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than September 1, 1981, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESS: Responses or additional data should be filed with Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of Order 81–8–76.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Snovitch, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5074.

SUPPLEMENTARY INFORMATION: The complete text of Order 81–8–76 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81–8–76 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 13, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81–24051 Filed 8–17–81; 8:45 am]

BILLING CODE 6320–01–M

[Order 81–8–81]

Petition of Sky West Aviation, Inc.; for Establishment of Subsidy Mail Rate

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 81–8–81, establishing final subsidy mail rate for service to Cedar City, Utah, and Page, Arizona, Docket 36243.

SUMMARY: The Board is proposing to set the subsidy mail rate for service to Cedar City and Page at $596,952 for the period June 1, 1979 through September 30, 1980 and $504,557 for annual periods commencing October 1, 1980.

DATE: Persons filing objections to the order must file notice by August 24, 1981, and, if notice is filed, written answer and supporting documents shall be filed within 30 days after date of service of this order.

ADDRESS: Objections should be filed in Docket 26243, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and served on all parties listed in paragraph 5 of Order 81–8–81.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. (202) 673–5368.

SUPPLEMENTARY INFORMATION: The complete text of Order 81–8–81 is available from our Distribution Section. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, B–22b, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 13, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81–24053 Filed 8–14–81; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 9–81]

Foreign-Trade Zone No. 70, Detroit; Application for Special-Purpose Subzone

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), grantee of Foreign-Trade Zone No. 70, requesting authority to establish a special-purpose subzone at a Chrysler Corporation assembly plant in Detroit, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 10, 1981.

On July 21, 1981, the Board authorized GDFTZ to establish a foreign-trade zone project in the Detroit area consisting of general-purpose zone sites in downtown Detroit and Dearborn, and a subzone at the Ford tractor plant in Romeo, Michigan (Board Order 176, 46 FR 38941, 7–30–81). GDFTZ is a Michigan non-profit corporation affiliated with the City of Detroit and the Greater Detroit Chamber of Commerce which was incorporated in 1979 to assist the area's international trade through the establishment of a trade zone program. It is authorized to submit zone applications under Chapter 447, Act 154, Michigan Public Acts of 1963 (MSA 21.302 (1)).

The applicant proposes to establish a subzone for Chrysler's Jefferson Assembly Plant, located at 12200 East Jefferson Avenue, Detroit. The 120-acre facility has recently been renovated for the assembly of the company's front-wheel drive K-cars using domestic and foreign components.

Zone procedures will allow Chrysler to export finished autos without paying duties on foreign parts and materials. On its domestic sales the company will be able to take advantage of the duty rate applicable to finished autos, which is lower than the rate for many components. This will assist Chrysler in competing with offshore assembly plants, helping assure full employment at the 6000-worker Jefferson facility.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), International Trade

Specialist, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Louis A. Mezzano, District Director, U.S. Customs Service, Region IX, 477 Michigan Avenue, Detroit, Michigan 48226; and Colonel Robert V. Vermillion, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 18, 1981.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Building, Room 445, 231 West Layfayette Street, Detroit, Michigan 48226.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and E Streets, N.W., Room 2006, Washington, D.C. 20230.

Dated: August 13, 1981.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 81-24028 Filed 8-17-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94-265), will meet with the Alaska Board of Fisheries to discuss provisions of a draft king crab fishery management plan that should be in place for the 1982 fishery. Time for public testimony has been set to Thursday, September 10, 1981, at 9 a.m. A detailed agenda will be sent to the public around August 21, 1981. The Council's Scientific and Statistical Committee and Advisory Panel will *not* meet.

DATES: The public meetings will convene on Thursday, September 10, 1981, approximately 9 a.m., and will adjourn on Friday, September 11, 1981, at approximately 5 p.m. The meetings may be lengthened or shortened depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Elks Hall, Kodiak, Alaska.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274-4563.

Dated: August 13, 1981.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81-24064 Filed 8-17-81; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Levels for Certain Cotton and Wool Textile Products from Macau

August 12, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by the application of swing and carryforward, the levels of restraint established for cotton trousers in Category 347/348 and wool sweaters in Category 445/446, produced or manufactured in Macau, from 262,655 to 298,844 dozen and from 64,518 to 72,064 dozen, respectively, during the agreement year which began on January 1, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Portugal concerning products produced or manufactured in Macau provides for percentage increases in certain specific ceilings during an agreement year (swing) and for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the succeeding year's level. Pursuant to the terms of the bilateral agreement, the levels of restraint for Categories 347/348 and 445/446 are being adjusted for the twelve-month period which began on January 1, 1981.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 11, 1980, there was published in the **Federal Register** (45 FR 81643) a letter dated December 8, 1980, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 347/348 and 445/446, produced or manufactured in Macau, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the levels of restraint established for cotton and wool textile products in Categories 347/348 and 445/446 to the designated amounts during the twelve-month period which began on January 1, 1981.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

August 12, 1981.

Commission of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 8, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981 of cotton, wool and man-made fiber textile products, produced or manufactured in Macau, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Portugal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 29 and December 18, 1979, as amended, between the Governments of the United States and Portugal, which provide, in part, that: (1) within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) these levels may also be increased for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

11951 of January 6, 1977, you are directed to prohibit, effective on August 13, 1981 and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 347/348 and 445/446, produced or manufactured in Macau, in excess of the following levels of restraint:

Category	Adjusted twelve-month level of restraint [1]
347/348	298,844 dozen.
445/446	72,064 dozen.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1980.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton and wool textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committe for the Implementation of Textile Agreements.

[FR Doc. 81-23979 Filed 8-17-81; 8:45 am]

BILLING CODE 3501-25-M

Amending Import Levels for Certain Cotton Apparel Products from Sri Lanka

August 13, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the sublimit for men's and boys' woven cotton shirts in Category 340 from 374,500 dozen to 385,000 dozen and decreasing the sublimit for men's and boys' woven shorts of man-made fibers in Category 640 from 85,600 dozen to 75,100 dozen within the overall limit for Category 340/341/640/641, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on May 1, 1981. The sublimits for Categories 341 and 641 are not being changed.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121)).

SUMMARY: On June 22, 1981, the Governments of the United States and Sri Lanka exchanged notes amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 7, 1980 to establish sublimits of 385,000 dozen for Category 340 and 74,100 dozen for Category 640 within the overall level for Category 340/341/640/641 during the agreement period which began on May 1, 1981 and extends through April 30, 1982.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On May 1, 1981, there was published in the **Federal Register** (46 FR 24618) a letter dated April 27, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton and man-made fiber textile products, including Category 340/341/640/641, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on May 1, 1981 and extends through April 30, 1982. In the letter published below, pursuant to an amendment to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the levels of restraint previously established for Categories 340 and 640 to the designated amounts.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1981.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 27, 1981 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Sri Lanka.

Effective on August 13, 1981, the directive of April 27, 1981 is amended to include the following adjusted sublimits for cotton and man-made fiber textile products in Categories 340 and 640 within the overall limit established for Category 340/341/640/641:

Category	Adjusted twelve-month level of restraint [1]
340/341/640/641	1,230,500 dozen of which not more than 385,0900 dozen shall be in Category 340; not more than 385,200 dozen shall be in Category 341; not more than 75,100 dozen shall be in Category 640 and not more than 385,200 dozen shall be in Category 641.

[1] The levels of restraint have not been adjusted to reflect any imports after April 30, 1981.

The actions taken with respect to the Government of Sri Lanka and with respect to imports of cotton and man-made fiber textile products from Sri Lanka have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-23978 Filed 8-17-81; 8:45 am]

BILLING CODE 3510-25-M

Adjusting the Import Restraint Levels for Certain Man-Made Fiber Textile Products from Costa Rica

August 13, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Deducting from the 1981 level established for man-made fiber brassieres in Category 649 carryforward yardage of 77,268 dozen used during the twelve-month period which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica, provides, among other things, for designated percentage increases in certain specific category ceilings for carryforward during an agreement year. Carryforward is an amount borrowed from the level of restraint applicable to the affected category in the succeeding agreement year and, to the extent used, is deducted from that succeeding year's level. Pursuant to the terms of the bilateral

agreement, the import level for Category 649 is being reduced to account for carryforward used during the previous agreement period in the amount of 77,268 dozen. The adjusted level for the twelve-month period which began on Janury 1, 1981 will be 1,607,732 dozen.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On November 28, 1980, a letter dated November 21, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (45 FR 79136), which established an import restraint level for man-made fiber textile products in Category 649, produced or manufactured in Costa Rica and exported to the United States during the twelve-month period which began on January 1, 1981. In the letter published below the Commissioner of Customs is directed, in accordance with the terms of the bilateral agreement, to reduce the twelve-month level of restraint previously established for Category 649 to 1,607,732 dozen.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1981.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On November 21, 1980, the Chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption or withdrawal from warehouse for consumption during the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica, in excess of a designated level of restraint. The Chairman further advised you that the level of restraint is subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to reduce, effective on August 13, 1981, the twelve-month level of restraint established for Category 649 to 1,607,732 dozen.[2]

The actions taken with respect to the Government of Costa Rica and with respect to imports of man-made fiber textile products from Costa Rica have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-23977 Filed 8-17-81; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980 between the Governments of the United States and Costa Rica, which provide, in part, that: (1) the specific limit may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1980.

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 81-2]

Petition To Initiate Cable Television Royalty Fee Adjustment Proceeding for Cable Systems Carriage of Distant Signals Formerly Prohibited by FCC Distant Signal and Syndicated Exclusivity Restrictions; and To Waive Copyright Royalty Tribunal Rule 301.63

17 U.S.C. 801(b)(2) B and C and 17 U.S.C. 804(b) authorize any copyright owner or user whose cable royalty rates are established by 17 U.S.C. 111, or by a rate established by the Copyright Royalty Tribunal (Tribunal) to file a petition with the Tribunal requesting an adjustment of the royalty rate in the event of certain amendment of the rules and regulations of the Federal Communications Commission relating to distant signal carriage or syndicated exclusivity. The Federal Communications Commission has repealed these rules (Report and Order in Docket Nos. 20988 and 21284, 79 FCC 2d 663 (1980). The Commission's order was stayed pending judicial review. The order was subsequently affirmed, and the stay was vacated on June 25, 1981.

Section 301.63 of the Tribunal's Rules of Procedure provides, with respect to royalty adjustment petitions relating to certain actions of the Federal Communications Commission that the Tribunal "shall not start to consider any petition before the expiration of * * * 90 days from the effective date of the Federal Communications Commission action."

On August 11, 1981 the National Cable Television Association, Inc. (NCTA) filed with the Tribunal a "Petition To Waive Rule 301.63 And To Initiate Cable Television Copyright Royalty Fee Adjustment Proceedings". The petition is available for public inspection in the offices of the Tribunal. For the reasons set forth in the petition, NCTA has urged the Tribunal to commence a cable royalty adjustment proceeding "as expeditiously as possible" and to waive Rule 301.63 for the "good cause" reasons set forth in the petition.

The Tribunal finds that the orderly conduct of the Tribunal's business will be best served by providing for a single consolidated comment period on all issues presented by the NCTA petition. In accordance with 17 U.S.C. 804(a)(2), comments shall consider whether NCTA is a user of copyrighted works "with a significant interest in the royalty rate in which an adjustment is requested". Any such comments shall be submitted not later than September 24, 1981.

Comments shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Washington, D.C. 20036.

Thomas C. Brennan,

Acting Chairman, Copyright Royalty Tribunal.

[FR Doc. 81-24040 Filed 8-17-81; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a listing of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat
- Thomas D. Conrad
- George P. Forschler
- Joe Lineberger
- James E. Williams

Air Staff
- Ronald C. Hovell
- Alan K. Olsen
- Rona Stillman
- Major General William J. Campbell
- Major General Martin C. Fulcher
- Major General Jasper A. Welch, Jr.
- Brigadier General Richard F. Abel
- Brigadier General Avon C. James

Air Force Logistics Command (AFLC)
- Robert V. Brown

Brigadier General Charles McCausland
Other
Frank Derby
Francis R. Flinn
Henry Fong
Francis J. O'Meara
Brigadier General John A. Shaud
Brigadier General Gerald D. Larson
Air Force Systems Command (AFSC)
Edward T. Curran
John N. Entzminger
John Kunsemiller
Samuel Lambert
James G. Mitchell
Frank J. Rehm
George K. Richey
Edmund J. Westcott

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 81-24030 Filed 8-17-81; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
Dates of Meeting: September 14-15, 1981.
Place:

- Humphreys Hall, Fort Belvoir, Virginia—14 & 15 September 81.
- Night Vision and Electro Optical Laboratory (NV&EOL), Fort Belvoir, Virginia—15 September 81.
- U.S. Army Research Institute for the Behavioral and Social Sciences (ARI), Alexandria, Virginia—15 September 81.
- U.S. Army Mobility Equipment Research and Development Command (MERADCOM) Laboratory, Ft. Belvoir, Virginia—15 September 81.

Times:

0830-1645 hours, September 14, 1981, Humphreys Hall (Closed).
0825-1150 hours, September 15, 1981, NV&EOL (Closed).
0810-1110 hours, September 15, 1981, ARI (Closed).
0820-1145 hours, September 15, 1981, MERADCOM (Closed).
1330-1500 hours, September 15, 1981, Humphreys Hall (Closed).
Proposed Agenda: The Army Science Board will hold its Fall General Membership Meeting to present and receive briefings as shown in the Agenda:

Monday, September 14

0830-0845 Opening of Meeting by Chairman, ASB.
0845-0850 Remarks by ASA(RAD).
0850-0900 Welcome by Host—Commander, DARCOM.
0900-1000 DARCOM Briefing.
1020-1100 ERADCOM Briefing.
1100-1140 MERADCOM Briefing.
1140-1200 Design of Army Tests (ASB Briefing/Discussion).
1320-1340 Sec Army's Overview.
1340-1400 Needs of the Army—VSCA.
1400-1645 ASB Briefings/Discussion.

- Armor/Anti-Armor.
- Indirect Fire Engagement Simulator.
- Equipping the Army 1990-2000.
- Testing of Electronic Systems.
- Manning Army Systems.

Tuesday, September 15

0810-1150 Tours.

- NV&EOL
- ARI
- MERADCOM

1330-1430 Round Table Discussion.
1430-1500 Closing Remarks by ASA(RDA).

Portions of the meeting as indicated will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof. The classified and nonclassified matters to be discussed during those portions are so inextricably intertwined so as to preclude opening those portions.

Roger W. Mickelson,

Colonel, GS, Executive Director.

[FR Doc. 81-23963 Filed 8-17-81; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board.
Date of Meeting: 17 and 18 September 1981.
Time: 0830-1600, 17 September; 0831-1300, 18 September.
Place: McCormick Facility, Parsons Island, Kent Island, Maryland.

Proposed Agenda: Agenda items for the meeting include discussions concerning future trends in Army medical research and development, present status of Navy infections disease research, heat stress in Army personnel, infectious disease threats to rapid deployment forces, subcommittee reports, Air Force CART program, preventive medicine reports and hepatitis B distribution in Army active duty personnel.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Pentagon, Washington, DC 20310.

Dated: 7 August 1981.

Charles W. Halverson,

Capt. MSC, USN, Executive Secretary.

[FR Doc. 81-23961 Filed 8-17-81; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board ad hoc subcommittee on epidemiological methods in clinical health care delivery systems.
Date of Meeting: 16 September 1981.
Time: 0900-1500.
Place: McCormick Facility, Parsons Island, Kent Island, MD.

Proposed Agenda: Epidemiological methods in clinical health care delivery systems.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Pentagon, Washington, DC 20310.

Dated: 7 August 1981.

Charles W. Halverson,

Capt., MSC, USN, Executive Secretary.

[FR Doc. 81-23962 Filed 8-17-81; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education; Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 18, 1981, 9:00 a.m. to 5:00 p.m.

ADDRESS: National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult

Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376-8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee is open to the public. The proposed agenda includes: Budget Reconciliation Act, State Administrative Cost Factors, Annual Report, Reauthorization of the Vocational Education Act (Session with the Assistant Secretary for Vocational and Adult Education), Reauthorization of the Adult Education Act, FY-82 Council Budget.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on August 12, 1981.

Gary A. Eyre,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 81-24031 Filed 8-17-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Public Utility Regulatory Policies Act Order

AGENCY: Bonneville Power Administration (BPA), Department of Energy.

ACTION: Order Rejecting Lifeline Rates.

SUMMARY: By **Federal Register** notice of October 8, 1980 (45 FR 66837), BPA announced that it would hold hearings on November 13, 1980, and accept proposed findings and conclusions through December 12, 1980, regarding whether BPA should implement lifeline rates pursuant to section 114 of the Public Utility Regulatory Policies Act (PURPA). Hearings were held on November 13, 1980, regarding lifeline rates. Evidence was presented. The BPA staff was the only party that submitted proposed findings and conclusions. The Hearing Officer prepared a Summary of Record, Findings, Conclusions, and Recommended Determination, which was adopted by the BPA Administrator. Opportunity to submit exceptions to the proposed order were afforded all parties. Based on the evidence offered at the hearings, the BPA Administrator on August 7, 1981, entered an order that lifeline rates should not be adopted by BPA.

FOR FURTHER INFORMATION CONTACT: Further information, including copies of the exhibits mentioned in the Summary of Record, are available from Ms. Donna Lou Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-234-3361, extension 4261. Toll-free numbers for Oregon callers 800-452-8429; for callers from Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California 800-547-6048.

SUPPLEMENTARY INFORMATION:

Hearing Officer's Report: On January 2, 1981, the Hearing Officer submitted to Bonneville his Summary of Record, Findings, Conclusions, and Recommended Determination. This report stated that the purpose of the proceeding was to consider and determine whether or not it is appropriate for Bonneville to implement lifeline rates, as provided by PURPA. Lifeline rates are rates lower than cost-of-service for essential needs of residential electric consumers. They would be intended to reflect the minimum amount of electricity required for lighting, refrigeration, and some water heatings to meet a threshold for personal health and welfare.

The Hearing Officer reviewed the statement and evidence of the BPA staff, which concluded that lifeline rates should not be implemented by BPA. The staff position was that BPA does not serve residences. BPA sells electricity wholesale to utilities with various characteristics. Some of these utilities have adopted lifeline rates, some have not. BPA could only with difficulty monitor the practices of its many customers. BPA's customers include also Federal agencies and industries, as to which lifeline rates would be irrelevant. BPA should not indirectly impose PURPA standards by its rate practices on customers which are small utilities not covered by PURPA.

The Hearing Officer reviewed the presentations of the parties who proposed lifeline rates. Their contentions were that BPA's utility customers do establish retail rate designs which follow the lead of BPA's rates to the utilities. They referred to lifeline rates as "baseline" rates, intending that they should meet the essential needs of residential customers and not be granted on an income-related basis. They contend that such a rate by BPA would be followed by the utilities, even after adding their costs of distribution and marketing, with lower rates for the baseline block for residential customers and that such a lower initial block rate would have a conservation of electricity effect.

Several witnesses opposed lifeline rates for BPA on the grounds that: (1) The PURPA standard on lifeline rates applies expressly to residential consumers. (2) Imposition by BPA of lifeline rates on the larger utility customers would interfere with those utilities in their own PURPA-mandated consideration of lifeline rates. (3) Mandating lifeline rates on BPA's smaller utility customers, which are not covered by PURPA, would extend the reach of PURPA beyond the intent of Congress. (4) BPA's utilities and their consumers are diverse in characteristics which bear on the need, effectiveness, and appropriateness of lifeline rates. (5) It would be difficult for BPA to implement lifeline rates through its wholesale rate structure. (6) There is doubt that a wholesale power distributor should undertake social welfare goals through its rate structure. (7) Lifeline rates do not follow the PURPA cost-of-service standard and may give a pricing signal that an energy shortage does not exist.

The Hearing Officer's findings accept the principles, facts, and conclusions of the witnesses who opposed lifeline rates. He concluded that BPA, as a wholesale power distributor, could not effectively engender the purposes of lifeline rates for residential consumers by adopting lifeline rates for its wholesale utility customers. The diversity amongst BPA's customers and their consumers weighs against a uniform regionwide lifeline rate. Also, the imposition of PURPA lifeline rates on small utilities which are not subject

to PURPA seems improper and contrary to congressional intent.

The Hearing Officer concluded:

"Taking into account the foregoing findings and conclusions, I determine that it would be inappropriate, untimely and inadvisable for the Bonneville Power Administration to adopt the rate under consideration. I recommend to the Bonneville Power Administrator that he decline to adopt a rate for essential needs of residential electric customers which is lower than rates developed pursuant to Bonneville's cost-of-service standard published at 44 FR 68948."

ORDER: The Administrator's Order determining not to implement life rates is as follows:

Determination Order by Bonneville Power Administration on Lifeline Rates Pursuant to Public Utility Regulatory Policies Act

Whereas the Congress of the United States enacted the Public Utility Regulatory Policies Act of 1978 (PURPA), which pertains to Bonneville Power Administration (BPA) as an electric utility which sells electric energy;

And whereas section 114 of PURPA requires BPA to determine, after an evidentiary hearing, whether a rate for essential needs of residential electric consumers, a rate referred to as a lifeline rate, which is lower than a rate reflecting the costs of providing electric service to such class, should be implemented by BPA;

And whereas, upon due notice, BPA on November 13, 1980, held hearings in due form before Dean F. Ratzman, the duly designated Hearing Officer, and heard testimony and took evidence concerning lifeline rates;

And whereas the Hearing Officer has filed with the Administrator of BPA a Summary of Record, Findings, Conclusions, and Recommended Determination;

And whereas BPA has considered lifeline rates and the appropriate applicability thereof to BPA as disclosed by the evidence offered at the hearings;

And whereas BPA hereby adopts the Summary of Record, Findings, Conclusions, and Recommended Determination of the Hearing Officer regarding lifeline rates under section 114 of PURPA;

Now, therefore, BPA hereby orders that, until further consideration and determination, for the reasons set forth in the Hearing Officer's Summary of Record, Findings, Conclusions, and Recommendation, lifeline rates are not adopted for BPA; and it is determined that a rate for essential needs of residential electric consumers which is lower than a rate reflecting the costs of providing electric service to such class should not be, and is not, implemented by BPA.

It is further ordered that no attorney fees nor witness fees shall be paid to any party or participant under section 122 of PURPA.

Dated: August 7, 1981.

Peter T. Johnson,

Administrator.

[FR Doc. 81-24082 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee, Subcommittee on Computational Capabilities for Nuclear Theory; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee, Subcommittee on Computational Capabilities for Nuclear Theory.

Date and Time: Thursday, September 10, 1981, 9 a.m.-5 p.m.; Friday, September 11, 1981, 9 a.m.-5 p.m.

Place: Department of Energy, Forrestal Building, Room 4A104, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Contact: Enloe Ritter, ER-23, Division of Nuclear Physics, MS-256, GTN, Department of Energy, Washington, D.C. 20545, Telephone: 301-353-3813.

Purpose of Parent Committee: To provide advice to the Department of Energy and the National Science Foundation on the Management of and long range planning for basic nuclear research programs.

Tentative Agenda:

- Reports from funding agencies.
- Discussion of computational needs of forefront theoretical nuclear research and examination of the ability of existing facilities to meet those needs.
- Formulation of the first draft of the final report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 13, 1981.

Howard H. Raiken,

Director of Management, Systems Analysis Division.

[FR Doc. 81-24083 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board.

Date and time: September 2, 1981—9:30 a.m. to 4:30 p.m. September 3, 1981—9:30 a.m. to 12:00 noon.

Place: Department of Energy, Forrestal Building—Room 8E069, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Contact: Georgia Hildreth, Chief, Advisory Committee Management Branch, Department of Energy, Forrestal Building—Room 4B222, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202-252-5187.

Purpose of the Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda:

—Discussion of R&D Panel Methodology and Terms of Reference.

—Briefing on Legal Issues Affecting R&D.

—Briefing and Overview of Multi-Purpose Laboratories.

—Status Reports from ERAB Panels.

—Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Branch at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts. Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00

a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Branch.

Issued at Washington, D.C., on August 11, 1981.

Howard H. Raiken,

Director of Management Systems Analysis Division.

[FR Doc. 81-24009 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA81-2-20-002]

Algonquin Gas Transmission Co., Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

August 6, 1981.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on July 27, 1981, tendered for filing 56th Rivised Sheet No. 10 and Fourth revised Sheet No. 10-B to its FERC Gas Tariff, First Revised Volume No. 1.

Algonquin Gas states that these sheets are being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. The rates as shown on Sheet No. 10 reflect the following: (i) and adjustment to amortize the June 30, 1981 balance in Algonquin Gas' Unrecovered Purchased Gas Cost Account (Account 191) and (ii) an adjustment to reflect higher purchased gas costs to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), to Algonquin Gas proposed to be effective August 1, 1981, under Texas Eastern's Sixtieth Revised Sheet No. 14D; Sheet No. 10-B reflects Projected Incremental Pricing Surcharges for the period September, 1981 through February, 1982.

Algonquin Gas requests that the proposed effective date of the revised tariff sheets as prescribed in Section 17 be as of September 1, 1981.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-23703 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-4-001 (PGA81-2, IPR81-2)]

Granite State Gas Transmission, Inc.; Revised Change in Rates

August 6, 1981.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, on July 22, 1981, tendered for filing Substitute Thirty-First Revised Sheet No. 3A in its FERC Gas Tariff, Original Volume No. 1, containing proposed changes in rates for effectiveness on July 1, 1981.

According to Granite State, the tariff sheet revises its purchased gas cost adjustment initially filed on May 29, 1981, to reflect the adjustment in the rates of Tennessee Gas Pipeline Company, a Division of Tenneco Inc., resulting from the elimination of the Louisiana First Use Tax adjustment from Tennessee's rates.

Granite State further states that its rate adjustment is applicable to its sales to Northern Utilities, Inc. (Northern), which is Granite State's sole jurisdictional customer.

According to Granite State, copies of the filing were served upon Northern and the regulatory commissions of the States of Maine and New Hampshire.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Aug. 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-23708 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-44-004]

Commercial Pipeline Company, Inc., PGA Filing

August 6, 1981.

Take notice that on July 21, 1981, Commercial Pipeline Company, Inc. (Commercial) tendered for filing Thirty-Sixth Revised Sheet No. 3A reflecting Purchased Gas Adjustments and effective dates as set out below:

Sheet No.	Current adjustments	Surcharge adjustment	Cumulative adjustments	Effective date
36th revised sheet No. 3A	0.3878	($0.0883)	0.6254	July 23, 1981.

Commercial states that these revisions track precisely similar revisions in the tariff of Cities Service Gas Company, its sole supplier. Commercial requests waiver of notice to the extent required to permit said tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Los D. Cashell,

Acting Secretary.

[FR Doc. 81-23705 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-95-000]

Pacific Interstate Transmission Co.; Proposed changes in FERC Gas Tariff of Pacific Interstate Transmission Company

August 6, 1981.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on July 27, 1981, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet: First Revised Sheet No. 9. The proposed change would increase the charges of Pacific Interstate to its jurisdictional customer solely by reason of reflecting in its rates an increase in the rate of return on equity. All elements used to compute the rates proposed in this subject filing, other than return on equity and related income taxes, are the same as those used to complete the Initial Rates as set forth in Pacific Interstate's filing of July 10, 1981. The proposed change would increase revenues from Pacific Interstate's service under FERC Gas Tariff Original Volume No. 1 by an estimated $2,535,000 per year.

Copies of the filing were served upon Pacific Interstate's customer and affected State Commissions.

Any party desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-23713 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

Federal Energy Regulatory Commission

[Project No. 4865-000]

Allegheny County, Pennsylvania; Application for Preliminary Permit

August 12, 1981.

Take notice that Allegheny County (Applicant) filed on June 12, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4865 known as the Monongahela River Lock and Dam No. 2 Project located on the Monongahela River in Allegheny County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James W. Knox, Allegheny County Department of Planning, 429 Forbes Avenue, Room 1300, Pittsburgh, Pennsylvania 15219.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers' Monongahela River Lock and Dam No. 2 and would consist of: (1) a powerhouse containing one or more bulb type turbines with a total rated capacity of 6.7 MW; (2) an existing transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 35.5 GWh.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. The proposed term of the preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be in the range of $50,000 to $60,000.

Competing Applications.—This application was filed as a competing application to the Monongahela Lock and Dam No. 2 Project No. 3752 filed on November 18, 1980, by Mitchell Energy Company, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies only directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 9, 1981.

Filing and Service of Responsive Documents.—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4865. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23982 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4588-000]

City of Menasha, Wisconsin; Application for Preliminary Permit

August 13, 1981.

Take notice that the City of Menasha, Wisconsin (Applicant) filed on April 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4588 known as the Menasha Lock and Dam Hydroelectric Project located on the Fox River in Winnebago County, Wisconsin. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James M. Waters, President, Waters & Associates, Inc., Consulting Engineers, P.O. Box 4086, Madison, Wis., 53711.

Project Description.—The proposed project will utilize the U.S. Army Corps of Engineers Menasha Lock and Dam. Project No. 4588 would consist of: (1) a

proposed powerhouse with an installed generating capacity of 1,100 kW; (2) a proposed transmission line; and (3) appurtenant facilities. The Applicant estimates that the estimated annual energy output would be 9,900 MWh.

Proposed Scope of Studies Under Permit.—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $55,000.

Competing Applications.—This application was filed as a competing application to the Menasha Lock and Dam Project No. 3770 filed on November 21, 1981, by Mitchell Energy Company, Inc., under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 10, 1981.

Filing and Service of Responsive Documents.—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4588. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23983 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4929-000]

City of Rohnert Park, California; Application for Preliminary Permit

August 12, 1981.

Take notice that the City of Rohnert Park, California (Applicant) filed on June 22, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4929 to be known as the Tish Tang a Tang Creek, Humboldt Project located on Tish Tang a Tang Creek in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Boulevard, Rohnert Park, California 95427.

Project Description.—The proposed project would consist of: (1) a 78-foot long, 5-foot high diversion structure; (2) a 7,700-foot long diversion conduit; (3) a 1,750-foot long penstock; (4) a powerhouse to contain one or more generating units with a total rated capacity of 4,500 kW; and (5) a 7.5-mile long transmission line. The average annual energy generation is estimated to be 21.1 million kWh.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct engineering, environmental and economic feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be $100,000.

Competing Applications.—This application was filed as a competing application to the Tish Tang a Tang Creek, Humbolt Project No. 4367 filed on March 18, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 9, 1981.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23984 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4926-000]

City of Rohnert Park, California, Application for Preliminary Permit

August 12, 1981.

Take notice that the City of Rohnert Park, California (Applicant) filed on June 22, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4926 to be known as the Pine Creek, Humboldt Project located on Pine Creek in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Robert A. Lewis, City of Rohnert Park, 6750 Commerce Boulevard, Rohnert Park, California 95427.

Project Description.—The project would consist of: (1) a 335-foot long, 5-foot high diversion structure; (2) a 7,000-foot long diversion conduit; (3) a 350-foot long penstock; (4) a powerhouse to contain one or more generating units with a total rated capacity of 4,560 kW; and (5) a 3-mile long transmission line. The average annual energy generation is estimated to be 18.7 million kWh.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct engineering, environmental and economic feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be $100,000.

Competing Applications.—This application was filed as a competing application to the Pine Creek, Humboldt Project No. 4365 filed on March 18, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing application or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 9, 1981.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", " PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23985 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4799-000]

Commonwealth of Pennsylvania; Application for Preliminary Permit

August 13, 1981.

Take notice that the Commonwealth of Pennsylvania (Applicant) filed on June 2, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4799–000 known as the Nockamixon State Park Dam Project located on Tohickon Creek in Bucks County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Clifford Jones, Secretary, Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, Pennsylvania 17120.

Project Description.—The project would consist of: (1) the existing Nockamixon State Park Dam, a rolled earth and rockfill structure having a height of 112 feet and a length of 1,511 feet; (2) the existing Nockamixon reservoir, having normal surface area of 1,450 acres at a normal pool elevation of 395.0 ft. m.s.l. and having a maximum storage capacity of 40,000 acre-feet; (3) a proposed powerhouse with a total installed capacity of 300 kW; and (4) appurtenant facilities.

The Dam and Reservoir are owned by the Commonwealth of Pennsylvania. The Applicant estimates that the average annual energy output would be approximately 2,500,000 kWh.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would study the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before September 25, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than the time specified in 4.33(c).

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 25, 1981.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23986 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4940-000]

Eastern States Energy & Resources, Inc.; Application for Preliminary Permit

August 13, 1981.

Take notice that Eastern States Energy & Resources, Inc. (Applicant) filed on June 23, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a) – 825(r)] for Project No. 4940 known as the Barren River Lock & Dam No. 1 located on the Barren River in Warren County Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Jeffrey M. Kossak, ESQ., Suite 1900, 14 Wall Street, New York, New York 10005

Project Description.—The proposed project would utilize a U.S. Army Corps of Engineers' Dam & Reservior. Project No. 4940 would consist of: (1) a proposed powerhouse located at the existing structure with an estimated installed capacity of 2.5 MW; (2) proposed transmission lines; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 12.5 GWh.

Proposed Scope of Studies under Permit.—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $57,500.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before October 16, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in §4.33(c).

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before October 16, 1981.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23987 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5058-000]

Glenn-Colusa Irrigation District; Application for Preliminary Permit

August 12, 1981.

Take notice that the Glenn-Colusa Irrigation District (Applicant) filed on July 6, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 5058 to be known as the Tehama-Colusa/Glenn-Colusa Intertie Hydroelectric Project located on the U.S. Bureau or Reclamation's (USBR) Tehama-Colusa/Glenn-Colusa Canal in Calusa County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: CH 2M Hill, Attention: Mr. Joseph E. Patten, P.O. Box 2088, Redding, California 96099.

Project Description.—The proposed project would consist of: (1) a 5,500-foot long, 12-foot diameter penstock to convey flows from the USBR Canal to; (2) a powerhouse with a rated capacity of 5.9 MW; and (3) a 100-foot tap line to an existing Pacific Gas and Electric Company 230-kV transmission line. *Proposed Scope of Studies under Permit.*—A preliminary permit, if issued, does not authorize construction. The Applicant is seeking a 36-month permit to study the feasibility of constructing and operating the proposed project.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before September 24, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene.—Anyone may submit comments, a protest, or a petition to

intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 24, 1981.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23988 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4848-000]

Idaho Water Resource Board; Application for Preliminary Permit

August 12, 1981.

Take notice that the Idaho water Resource Board (Applicant) filed on June 10, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4848–000 known as the Palisades Project located on the Snake River at a Government Dam (T.15., R45E., B.M. Sect 17) in Bonneville County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: A. Kenneth Dunn, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720.

Project Description—The proposed project would utilize existing facilities at the U.S. Bureau of Reclamation's Palisades Dam Project and Reservoir. The Applicant proposes to make the following additions: (1) a new surge tank located at the existing power tunnel approximately 100-feet upstream of the existing powerhouse; (2) a new 18-foot diameter, 400-foot long penstock; (3) a powerhouse extension on the north side of the existing powerhouse containing two turbine-generator units with a total rated capacity of 90 MW; (4) a 150-foot long, 100-foot wide tailrace extension; and (5) appurtenant facilities. The Applicant has indicated that modifications may also be needed to the existing 111 mile long transmission line operated by the Bonneville Power Administration. The proposed Project would not include the existing powerhouse containing four turbine-generators with a total rated capacity of 119 MW operated by the Bureau of Reclamation. Energy produced at the project may be sold to investor owned utilities and/or the rural electric power companies in Idaho.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before September 24, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 24, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23989 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project Nos. 3072, 3157, 3160 and 3162]

John M. Jordan; Surrender of Preliminary Permit

August 14, 1981.

Take notice that John M. Jordan of Saxapahaw, North Carolina, Permittee for the proposed Saxapahaw, Milburnie Dam, Columbia Manufacturing Dam, and Swepsonville Dam, Projects Nos. 3072, 3157, 3160 and 3162, respectively, has requested that his aforementioned preliminary permits be terminated. The Preliminary Permit for Project No. 3072 was issued on September 10, 1980, and would have expired on September 9, 1981. The Preliminary Permits, for Projects Nos. 3157 and 3162 were both issued on September 30, 1980, and would have expired on September 29, 1981. The Preliminary Permit for Project No. 3160 was issued on September 30, 1980, and would have expired on September 29, 1982. Projects Nos. 3072 and 3162 would have been located on the Haw River in Alamance County, North Carolina.

Project No. 3157 would have been located on the Neuse River in Wake County, North Carolina and Project No. 3160 would have been located on the Deep River in Randolph County, North Carolina. John Jordan cites that "at this point in time, we plan no further work on the following dam sites (3072, 3157, 3160 and 3162) and therefore request that our preliminary permits be terminated.

John Jordan filed his joint request on June 19, 1981, and the surrender of those permits for Projects Nos. 3072, 3157, 3160 and 3162 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23990 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CI60-393-000, et al.]

Marathon Oil Company, et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

August 11, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the 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 on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI60-393-000 D, July 30, 1981	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Transwestern Pipeline Company, Atoka Field, Eddy County, New Mexico.	[1]	
CI62-1523-000 D, July 27, 1981	Sohio Petroleum Company, 50 Penn Place, Suite 1100, Oklahoma City, Oklahoma 73118.	El Paso Natural Gas Company, Spraberry Area, Upton County, Texas.	[2]	
CI63-819-000, July 22, 1981 [2]	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221	Cities Service Gas Company, Northwest Lovedale Field, Harper County, Oklahoma.	[4]	
CI67-371-000 D, July 13, 1981	Energy Reserves Group, Inc., Post Office Box 1201, Wichita, Kansas 67201	Natural Gas Pipeline Company of America, Fort Supply Field, Harper County, Oklahoma.	[5]	
CI67-654-001 D, July 30, 1981	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Houston, Texas 77046.	Trunkline Gas Company, Lake Misere, South	[6]	
CI73-639-002, CI76-586-003, July 27, 1981 [2] [7]	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221	Southern Natural Gas Company, South Pass Block 61 Field, Offshore Louisiana.	[7]	15.025
CI75-138-001, C, July 29, 1981	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	TransOcean Oil Inc., South Marsh Island Blocks 268, 269, and 281, Federal Offshore Louisiana.	[8]	15.025
CI76-641-004, C, July 31, 1981	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221	Tennessee Gas Pipeline Company, West Cameron Block 36 Field, Offshore Louisiana.	[9]	15.025
CI81-121-001, C, July 6, 1981	Diamond Shamrock Corporation, P.O. box 631, Amarillo, Texas 79173.	Transcontinental Gas Pipe Line corporation, S/2 of the SW/4 of Block A-442, High Island Area, South Addition, Offshore Texas.	[10]	14.65
CI81-437-000, A, July 28, 1981	SONAT Exploration Company, 5599 San Felipe, Houston, Texas 77056.	Southern Natural Gas Company, Eugene Island Block 341, Offshore Louisiana.	[11]	15.025
CI81-438-000, A, July 28, 1981	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221	Southern Natural Gas Company, Ship Shoal Block 232, Offshore Louisiana.	[12]	15.025
CI81-439-000, B, July 28, 1981	Russell V. Johnson, Jr et al., 925 First Life Assurance Building, Oklahoma City, Oklahoma 73102.	Natural Gas Pipeline Company of America, Erick Field, Beckham County, Oklahoma.	[13]	
CI81-440-000, B, July 28, 1981	J. C. Templeton, P.O. Box 1814, Shreveport, Louisiana.	Natural Gas Pipeline Company of America, Erick Field, Beckham County, Oklahoma.	[14]	
CI81-441-000 (CI72-396), B, July 29, 1981	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Transwestern Pipeline Company, Fleming Unit, Gnggs Area, Cimarron county, Oklahoma.	[15]	
CI81-442-000 (G-7009), B, July 30, 1981	W E. Burchett, Jr., 505 Gum Street, Williamson, W Va.	Cities Service Company, Blackberry Creek, Pike County, Kentucky.	[16]	
CI81-443-000, A, July 31, 1981	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221	Panhandle Eastern Pipe Line Company, Spooney (Lower Morrow), Hansford and Ochiltree Counties, Texas.	[17]	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI81-444-000, A, Aug. 3, 1981	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, California 94120.	Southern Natural Gas Company, Big Escambia Creek Field, Escambia County, Alabama.	[18]	15.025
CI81-445-000, A, Aug. 3, 1981	Conoco Inc., P.O. Box 2197, Houston, Texas 77001	Natural Gas Pipeline Company of America, Dee State Comm. No. 1 Well, Dagger Draw Field, Eddy County, New Mexico.	[19]	14.65
CI81-446-000, B, Aug. 3, 1981	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company Company, P.O. Box 2819, Dallas, Texas 75221.	Chevron USA, Inc., Price Early Lease, I. A. Walker Survey, Scurry County, Texas.	[20]	
CI81-447-000, A, Aug. 3, 1981	Champlin Petroleum Company, Two Allen Center, 1200 Smith Street, Suite 1900, Houston, Texas 77002.	Panhandle Eastern Pipeline Company, Hugoton Field, Morton County, Texas.	[21]	14.65
CI81-448-000, A, Aug. 4, 1981	Diamond Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	United Gas Pipe Line Company, South half of the southwest quarter of Block A-442, High Island Area, Offshore Texas.	[22]	14.73
CI81-449-000, A, Aug. 4, 1981	Anadarko Production Company, P.O. Box 1330, Houston, Texas 77001.	Northern Natural Gas Company, West Delta Block 137 and 138, Offshore Louisiana.	[23]	15.025
CI64-1102-001, Aug. 3, 1981 [24]	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Transwestern Pipeline Company, Mendota Field, Robert & Hemphill Counties, Texas.	[25]	14.65
CI81-16-002, C, July 29, 1981	Union Oil Company of California, Union Oil Center, Room 901, P.O. Box 7600, Los Angeles, California 90051.	United Gas Pipe Line Company, Block A-443 (OCS-G-3241), High Island Area, Offshore Texas.	[26]	14.73

[1] Partial release of leases covered by the January 12, 1960 gas purchase agreement and relinquishment to lessors of leasehold interests.
[2] Release of Oil, Gas, and Mineral Leases dated November 15, 1978. The only well on these leases was plugged and abandoned September 30, 1976.
[3] Applicant is filing to establish a change in delivery point to be located in the NE/4 of Section 2-T27-N-R2W, Harper County, Oklahoma.
[4] Applicant is filing under Gas Purchase Contract dated October 4, 1962, amended by Amendatory Gas Purchase Contract dated June 29, 1981.
[5] Part of the acreage and some of the formations underlying the acreage was assigned to Cobra Oil & Gas Corporation on March 3, 1981.
[6] Production has ceased and the leases were surrendered on December 29, 1980.
[7] Applicant is filing under Gas Sales Agreement dated February 26, 1973, amended on March 31, 1976.
[8] Applicant is filing under Gas Sales Contract dated July 9, 1974, amended by Amendment dated September 1, 1980.
[9] Applicant is filing under Gas Purchase and Sales Agreement dated June 17, 1976, amended by Amendment dated May 27, 1981.
[10] Applicant is filing under Gas Purchase Contract dated December 23, 1980, amended by Amendment dated July 2, 1981.
[11] Applicant is filing under Gas Purchase and Sales Agreement dated June 16, 1981.
[12] Applicant is filing under Gas Purchase Contract dated July 1, 1981.
[13] Purchaser has succeeded to all of the interest of Seller under the contract dated October 16, 1967.
[14] Purchaser has succeeded to all of the interest of Seller under the contract dated June 19, 1967.
[15] Gas reserves were depleted and the well was plugged and abandoned on January 28, 1981. The lease expired by its own terms and has been released of record.
[16] Economic—Low production & Low rate.
[17] Applicant is filing under Gas Purchase and Sales Agreement dated May 14, 1962.
[18] Applicant agrees to accept a Certificate at the rates prescribed by the NGPA.
[19] Applicant is filing under Gas Purchase and Sales Agreement dated April 4, 1977.
[20] Contract expired by its own terms on June 12, 1953, and was formally cancelled effective June 12, 1979, by letter dated May 8, 1979. ARCO's records do not indicate that any gas was ever sold. Lease is held by oil production.
[21] Applicant is filing under Gas Sales Contract, dated March 28, 1958.
[22] Applicant is filing under Gas Purchase Contract dated June 30, 1981.
[23] Applicant is filing under Gas Purchase Contract dated September 21, 1979, amended November 1, 1979.
[24] Applicant is filing to change the delivery point applicable only to gas produced frm the J. C. Vollmert No. 2 Well Douglas formation.
[25] Applicant is filing under Gas Purchase Contract dated November 1, 1979, amended by Agreement dated June 1, 1981.
[26] Applicant is filing under Gas Purchase Contract dated September 9, 1980, amended by Amendatory Agreement dated June 18, 1981.
[27] Applicant is filing to amend the certificate to the extent required so as to authorize the temporary sale of gas from the South Pass Block 61 Field from time to time as emergencies occur.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 81-23991 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4890-000]

Roza Irrigation District; Application for Preliminary Permit

August 13, 1981.

Take notice that Roza Irrigation District (Applicant) filed on June 15, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)-825(r)] for Project No. 4890 known as the Bumping Lake Project located on the Bumping River in Yakima County, Washington. The application is on file and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Henry F. Vancik, Roza Irrigation District, P.O. Box 810, Sunnyside, Washington 98944.

Project Description—The proposed project would consist of: (1) a 2,400-foot long, 10-foot diameter penstock through the U.S. Bureau of Reclamation's 45-foot high Bumping Lake Dam; (2) a 11.5-mile long tunnel; (3) a powerhouse containing two generators with a total rated capacity of 31,000 kW, and (4) a 2.8-mile long transmission line. The Applicant estimates that the average annual energy output would be 162 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would conduct engineering, environmental, ecomomic, and feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be $130,000.

Competing Applications—This application was filed as a competing application to the Bumping River Project No. 3606 filed on November 24, 1980, by Pacific Hydro, Inc. and City of Yelm under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 10, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all

capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23992 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4438]

Sauk Centre Water, Light & Power Commission; Application for Preliminary Permit

August 13, 1981.

Take notice that Sauk Centre Water, Light & Power Commission (Applicant) filed on March 30, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a) 825(r)] for Project No. 4438 known as the Sauk River Dam located on the Sauk River in Stearns County, Minnesota. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: DeWayne Rubedor, Superintendent, Sauk Centre Water Light, and Power Commission, 523 Sinclair Lewis Avenue, Sauk Centre, Minnesota 56378.

Project Description—The proposed project would consist of: (1) an existing earth and concrete dam with a spillway section 58.5-foot long and 14.7-foot high and earth embankments on each side of the structure, each 20 feet long and 18 feet high; (2) an existing reservoir with maximum surface area of 25,800 acre-feet and an elevation of 1230.0 feet msl; (3) a proposed powerhouse to include generating facilities capable of obtaining an installed capacity of 120 kW; (4) a proposed transmission line approximately 1,000 feet in length to be interconnected to an existing network; and (5) appurtenant facilities. The proposed project is not located on Federal lands. The Applicant estimates that the average annual energy output would be 525,000 kWh.

Proposed Scope of Studies under Permit—A preliminary permit, is issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $15,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before October 16, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (a copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a part to the proceeding. Any comments, protest, or petition to intervene must be received on or before October 16, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23993 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4989-000]

Siskiyou County Flood Control and Water Conservation District; Application for Preliminary Permit

August 12, 1981.

Take notice that Siskiyou County Flood Control and Water Conservation District (Applicant) filed on June 24, 1981, an applicant for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. sections 791(a)–825(r)] for Project No. 4989 known as the Rock Creek Hydroelectric Project located on Rock Creek in Siskiyou County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Dave A. Gravenkamp, District Engineer, Siskiyou County Flood Control and Water Conservation District, 305 Butte Street, Yreka, California 96097 and Mr. Frank J. DeMarco, District Counsel, 304 Lane Street, P.O. Box 659, Yreka, California 96097.

Project Description—The proposed project would consist of: (1) a 90-foot long, 5-foot high diversion structure; (2) a 96-inch diameter, 3,000-foot long open channel conduit; (3) a 51-inch diameter, 540-foot long penstock; and (4) a powerhouse containing a single generating unit with a rated capacity of 5,800 kW. The Applicant estimates that the annual average energy output would be 18.6 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $100,000.

Competing Applications—This application was filed as a competing application to the Rock Creek Siskiyou Power Project No. 4416 filed on March 25, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 9, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of the notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23994 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4428-001]

Walden Power Corp.; Application for a Major License

August 13, 1981.

Take notice that the Walden Power Corporation (Applicant) filed on March 30, 1981, an application for a major license, pursuant to the Federal Power Act, 16 U.S.C. Sections 791(a)–825(r), for the Walden Power Project No. 4428 located on the Wallkill River in the town of Walden, Orange County, New York. Correspondence concerning the application should be directed to: Russell F. Lewis, Walden Power Corporation, P.O. Box 345, Walden, New York 12586.

Project Description—The proposed Walden Power Project would be run-of-the-river and would consist of: (1) an existing east-west concrete gravity dam, approximately 165 feet long and 14 feet high, with a concrete spillway section and provision for flashboards, 2 feet high, to an elevation of 342 feet m.s.l.: (2) a reservoir having minimal pondage; (3) an existing north-south concrete wing wall, 252 feet long and 25 feet high, extending downstream from the left dam abutment and enclosing a forebay at the left river bank; (4) an intake structure, to be rehabilitated, with repaired gates and new trashracks; (5) new penstocks, one 7 feet in diameter, two 6 feet in diameter, and one 5 feet in diameter leading to (6) an existing powerhouse to be renovated and to be equipped with new turbines and generators with ratings of 927 kW (7 foot penstock), 712 kW (6 foot penstock), 702 kW (6 foot penstock), and 483 kW (5 foot penstock), for a total rated capcity of 2,824 kW; (7) a restored tailrace; (8) a new transmission line through an existing underground conduit, approximately 500 feet long, connecting through a transformer to a 34.5-kV main transmission line; and (9) appurtenant facilities. The Applicant estimates that the average annual energy output would be 11,400,000 kWh. Project energy will be sold to the New York State Electric and Gas Corporation.

Competing Applications—This application was filed as a competing application to David Goodman and George R. Oliger's application for Project No. 3510 filed on September 29, 1980, under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 10, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23995 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4938-000]

Village of Ilion, New York; Application for Preliminary Permit

August 12, 1981.

Take notice that the Village of Ilion, New York (Applicant) filed on June 22, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. section 791(a)–825(r)] for Project No. 4938 known as the Dolgeville Hydroelectric Project located on the East Canada Creek in Herkimer County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Wallace L. Duncan; Duncan, Weinburg, and Miller, P.C.; 1775 Pennsylvania Avenue, NW; Suite 1200; Washington, D.C. 20006.

Project Description—The proposed project would consist of: (1) an existing concrete gravity dam, averaging 18 feet high and 180 feet long; (2) an existing

reservoir having a surface area of 60 acres at a mean surface elevation of 720.0 feet (USGS datum); (3) an existing intake structure with control gates; (4) new penstocks; (5) an existing powerhouse containing new turbine generator units with a rated capacity of 3,300 kW; (6) an existing tailrace; (7) an existing substation; (8) 100 feet of new transmission line; and (9) appurtenant works. The dam and reservoir are owned by the Niagara Mohawk Power Corporation. The Applicant proposes to utilize project energy to offset its purchases from the local utility. The average annual energy output is estimated by the Applicant to be 13,200,000 kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $75,000.

Competing Applications—This application was filed as a competing application to Project No. 4008 filed on January 12, 1981, under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies only directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 9, 1981.

Filing and Service of Responsive Documents—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4938. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-23996 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-85-M

Office of the Secretary

Proposed Consent Order With Standard Oil Company of California

AGENCY: Department of Energy (DOE).

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Standard Oil Company of California (Chevron). The Consent Order resolves all issues of compliance with the DOE Petroleum Price and Allocation Regulations, with the exceptions set forth in the Consent Order, for the period January 1, 1973 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Chevron has agreed to $82.5 million in remedies.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less that 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or issue the Consent Order as proposed. Comments: To be considered, comments must be received by 5:00 P.M., September 17, 1981. Address comments to: Chevron Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 3109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-9165.

Copies of the Consent Order may be received free of charge by written request to: Chevron Consent Order Request, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, N.W., Room 3109, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E-190, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: Chevron is one of the 35 major refiners subject to the audit jurisdiction of the OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Chevron engages in, among other things, the production, importation, refining and marketing of crude oil and refined petroleum products. An audit conducted by OSC of Chevron included a review of Chevron's records relating to compliance with the Regulations during the period January 1, 1973 through January 27, 1981 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. Except for the matters set forth in the Consent Order, this Consent Order resolves all administrative and civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Chevron's compliance with the applicable Regulations. OSC's audit reviewed Chevron's pricing and allocation policies and procedures and the manner in which Chevron applied the Regulations with respect to, among other things, its refining, processing, importation and marketing of crude oil

and covered products. Chevron's compliance with the regulations concerning marginal and newly discovered crude oil properties and with the entitlements regulations, however, are among the areas excluded from the Consent Order. At the conclusion of the audit, OSC raised certain issues with respect to Chevron's application of the Regulations; however, Chevron and DOE have agreed to resolve all matters whether or not raised or heretofore asserted by either party.

Neither OSC nor Chevron has retreated from the positions taken previously on the issues addressed in this Consent Order, and each believes that its positions on these issues are meritorious. Notwithstanding DOE's position to the contrary, Chevron maintains that it has correctly construed and applied the Regulations. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Chevron audit, and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Chevron has agreed to the following:

1. By December 31, 1981, Chevron will deliver to the Strategic Petroleum Reserve of the United States a quantity (approximately one million barrels) of Alaska North Slope crude oil having a delivered value of approximately $33 million.

2. Beginning ten days after the Consent Order has been made effective, Chevron will treat $25 million as being held in an interest-bearing constructive fund, for distribution to states and territories in which Chevron sold motor gasoline, No. 2 diesel fuel, No. 2 heating oil, and kerosene-based jet fuel to customers other than brokers and refiners during calendar year 1980. Each share of the constructive fund will be a percentage equal to a ratio of the volume of the four products sold in each state or territory to the total volume of the four products sold during 1980 in all states and territories participating in the fund.

After execution of the Consent Order by the parties, Chevron will begin notifying in writing each eligible state and territory of (1) the amount of the fund it is eligible to receive, (2) pursuant to the guidance contained in this notice, the remedial actions for which it may spend its share of the fund, and (3) the date by which the appropriate official must certify that the share will be devoted to such remedial actions.

Among the types of projects for which such shares may be used as remedial actions are: (a) ridesharing (i.e., vanpool) programs, highway and bridge maintenance or repair programs, and other programs that would generally benefit motor gasoline and diesel fuel consumers; (b) building energy audits, grant and loan programs for weatherization and other conservation retrofits, energy assistance programs, and other programs to benefit heating oil customers, and (c) airport maintenance programs and airport user fee reductions. The state or territory may suggest other projects that benefit consumers of motor gasoline, No. 2 diesel fuel, No. 2 heating oil, and kerosene-based jet fuel. The OSC will provide guidance to Chevron as to whether any other such proposed projects constitute appropriate remedial actions consistent with the legal remedial authority available under applicable law. If any state or territory decides not to participate, or does not submit a timely certification, that share will be reallocated to the states and territories that do submit certifications.

3. Within 15 days after the Consent Order has been made effective, Chevron will pay approximately $14 million to the U.S. Treasury in complete satisfaction of pending litigation brought by the United States to recover supplemental oil import fees.

4. Within 15 days after the Consent Order has been made effective, Chevron shall pay $10.5 million to Time Oil Company in settlement of the Proposed Remedial Order issued by OSC on June 29, 1978 (Case No. RCVB00501) and currently pending before DOE's Office of Hearings and Appeals, (*In Re: Chevron U.S.A., Inc.*, OHA Case No. DRO–0083).

The remedies described above reflect certain results of the audit of Chevron by OSC. Time Oil Company, a large volume purchaser of gasoline from Chevron, will receive $10,500,000 under the Consent Order to resolve certain specific issues contained in a Proposed Remedial Order alleging violations of the regulations by Chevron in its sales of gasoline to Time. The $14 million payment to the U.S. Treasury represents an amount found by a U.S. District Court to be due and owing the United States as a result of Chevron's failure to pay certain supplemental import fees. Since the audit was unable to identify overcharges to specific customers in sales of refined petroleum products by Chevron, OSC and Chevron identified states and territories in which such refined products were purchased. This program to make payments to the States and territories was developed in an attempt to confer a benefit on ultimate consumers who are the citizens of those states and territories. Alleged violations by Chevron of crude oil price rules affected upstream crude costs which were not traceable to Chevron's sales of refined products. As a result of the entitlements program, the impact of crude oil price control violations, if any, was generally distributed to products marketed by all refiners in the United States. Accordingly, OSC and Chevron determined that an appropriate remedy would be the delivery of crude oil to the Strategic Petroleum Reserve in an attempt to benefit generally future consumers of petroleum products.

As part of this settlement, Chevron shall also (1) dismiss its appeal in *United States* v. *Standard Oil Company of California*, Dkt. No. 79–4411 (9th Cir.); and (2) move to dismiss itself as a party to *Gulf Oil Corp. et al.* v. *DOE et al.*, Civil Action 80–0777 (D.D.C.) presently on appeal in No. 80–2096 (D.C.Cir.)

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties for any newly discovered regulatory violations committed by Chevron, but only on the ground that Chevron concealed such violations. Thus, DOE would be free to institute enforcement proceedings where, for example, Chevron had misled DOE during the course of an audit. This provision would not warrant subsequent enforcement proceedings merely because the company had inadvertently failed affirmatively to disclose certain material during the course of an audit.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Chevron has waived its right to an administrative or judicial appeal. The Consent Order does not constitute an admission by Chevron nor a finding by OSC of a violation of any federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 P.M. on the thirtieth day following publication of this notice will be considered by OSC before determining

whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment. After consideration of public comments by DOE, the Consent Order will be made final and effective by actual notice to that effect to Chevron. Pursuant to 10 CFR 205.199J(c), DOE will promptly publish in the **Federal Register** notice of any action taken on this Consent Order and an appropriate explanation of the action.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., August 13, 1981.

Avrom Landesman,

Acting Special Counsel.

[FR Doc. 81-24078 Filed 8-17-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-1910-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Federal Certification Test Results for 1981 Model Year

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 206(e) of the Clean Air Act, as amended August 1977, directs the Administrator of the Environmental Protection Agency to announce in the **Federal Register** and make available to the public, the results of certification tests conducted on new motor vehicles and new motor vehicle engines to determine conformity with Federal standards for the control of air pollution caused by motor vehicles. The Federal Certification Test Results for the 1981 model year are now available. Copies of the test results may be obtained by writing: U.S. Environmental Protection Agency, Mobile Source Air Pollution Control, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4225.

Dated: August 7, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-24043 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-26-M

[AMS-FRL-1910-5]

Fuel Economy Retrofit Devices; Announcement of Fuel Economy Retrofit Device Evaluation for "Wickliff Polarizer"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the conclusions of the EPA evaluation of the "Wickliff Polarizer" device under provisions of Section 511 of the Motor Vehicle Information and Cost Savings Act.

Background Information: Section 511(b)(1) and Section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) The effect of any retrofit device on fuel economy;

(2) The effect of any such device on emissions of air pollutants; and

(3) Any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting fuel economy retrofit device evaluations on March 23, 1979 [44 FR 17946].

Origin of Request for Evaluation: On March 10, 1981, the EPA received a request from Country Ford Sales, Inc., for evaluation of a fuel saving device termed "Wickliff Polarizer." This Device is claimed to reduce emissions and save fuel.

Availability of Evaluation Report: An evaluation has been made and the results are described completely in a report entitled: "EPA Evaluation of the Wickliff Polarizer Device Under Section 511 of the Motor Vehicle Information and Cost Savings Act," report number EPA-AA-TEB-511-81-17 consisting of 38 pages including all attachments.

Copies of this report may be obtained from the National Technical Information Service by using the above report number. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Phone: Federal Telecommunications System (FTS) 737-4650, Commercial 703-487-4650.

Summary of Evaluation

EPA fully considered all of the information submitted by the Device manufacturer in his Application. No valid test data was submitted with the application.

Based on this information and EPA's experience with similar devices, there is no technical basis to support any claims for an improvement in fuel economy or reduction in exhaust emissions due to the "Wickliff Polarizer."

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4299.

Dated: August 7, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-24044 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-26-M

[OPTS-51300; TSH-FRL-1910-2]

Polyamido Polymethacrylate Copolymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and Novermber 7, 1980 (45 FR 74378). This notice announces receipt of one PMN and provides a summary.

DATE: Written comments by: PMN 81-377, October 4, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51300]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of

Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-377	June Thompson	202-755-6660	E-529E

Mail address of notice manager: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following is a summary of information provided by the manufacturer on the PMN received by EPA:

PMN 81-377

Close of Review Period. November 3, 1981.

Manufacturer's Identity. ABCOR, Inc., 850 Main Street, Wilmington, MA 01887.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polyamido polymethacrylate copolymer.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that the new chemical substance is not volatile, nor soluble in water, therefore, no exposure value can be ascribed to it.

Environmental Release/Disposal. The manufacturer states that the new chemical substance is not going to be released due to its non-volatile and non-soluble nature. Customers are encouraged to return the spent product to the manufacturer for disposal in accordance with Resource Conservation and Recovery Act (RCRA).

Dated: August 7, 1981.

Denise F. Swink,

Acting Director for Management Support Division.

[FR Doc. 81-24042 Filed 8-17-81; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL RESERVE SYSTEM

Bank Holding Co.; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than September 10, 1981.

A. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Griswold State Bancshares, Inc., Griswold, Iowa, (data processing services; Iowa): a bank holding company, proposes to engage through its subsidiary, Prokop Insurance Agency, Griswold, Iowa, in the following activities: providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and storing and processing other banking, financial or related economic data, such as performing payroll, accounts receivable or payable, or billing services. Such services would also be provided for customers of Prokop Insurance Agency. Activities would conform to Section 225.4(a)(8) (i) & (ii) of Regulation Y, as amended by the Board of Governors of the Federal Reserve System. Such activities will be conducted at offices located in Griswold, Iowa. The service area includes the community of Griswold and surrounding market area including an area eight miles east of Griswold, six miles south of Griswold, eight miles west and approximately seven miles north of Griswold.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, August 11, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-24021 Filed 8-17-81; 8:45 am]

BILLING CODE 6210-01-M

Stapleton Bancorporation, Ltd., Acquisition of Bank

Stapleton Bancorporation, Ltd., Denver, Colorado, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 90 per cent or more of the voting shares of Dominion National Bank of Denver (In Formation), Denver, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than September 10, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, August 11, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-24020 Filed 8-17-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 77P-0403 et al.]

Availability of Approved Variances for Laser Light Shows

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that variances from the performance standard for laser products have been approved by the Bureau of Radiological Health for 28 organizations that manufacture and produce laser light

shows, or the laser light show projector, or both the light show and projector. The projector provides a laser display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table under "Supplementary Information."

ADDRESS: The application and all correspondence on the various applications have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), each of the 28 organizations listed in the table below has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product which is its particular variety of laser light show, or laser light show projector, or both, assembled and produced by the manufacturer. Each of the shows has levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection are provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for personnel who will operate the products. To associate uniquely the product with the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)), the docket number and effective date of the variance as specified in the table below. By letter to each manufacturer, the Director of the Bureau of Radiological Health approved the requested variances.

Approved Variances

Docket number	Manufacturing organization of the demonstration laser product	Demonstration laser product	Effect date of variance	Termination date of variance
77P-0403	Eye See The Light Show, Inc., 1500 Kendale, Suite 200, East Lansing, MI 48823.	Laser light show projector Models 2001 and Orion and laser light shows.	May 1, 1980	May 1, 1982
78P-0148	Laser Media, Inc., 2046 Armacost Ave., Los Angeles, CA 90025.	LM and LMS Series Projector and laser light shows	May 6, 1980	May 6, 1982
78P-0211	Showco, Inc., 9011 Governors Row, Dallas, TX 75247	Models 7a, 7b and 7c Laser Effects Projectors and Laser light shows.	June 6, 1980	June 6, 1982
78P-0295	Science Faction Corporation, 445 Park Ave., New York, NY 10022.	SFC-2000 Series Laser Scanning System and laser light shows.	May 16, 1980	May 16, 1982
78P-0432	Laser Concepts, 3246 Girard Ave. South, Rm. 100, Minneapolis, MN 55408.	Laser Scan Models LC-1000, LC-2000, LC-3000 and LC-4000 and laser light shows.	May 1, 1980	May 1, 1982
79P-0038	Infinity Projections, Inc., 337 Jupiter Drive, Littleton, CO 80124.	Laser Pattern Generator Model # 300-4 and laser light shows produced utilizing the Model # 300-4.	May 7, 1980	May 7, 1985
79P-0055	Audio Visual Imagineering, 7953 Twist Lane, Springfield, VA 22153.	AVI Laser Projection System Model AK-1400 and laser light shows.	May 19, 1980	May 19, 1982
79P-0060	Laser Presentations, Inc., 1392 King Ave., Columbus, OH 43212.	Laser light shows "Laser 1 or Laser Space Theatre" incorporating the LP-4 or LP-4K(1) laser projectors.	Sept. 19, 1980	Sept. 19, 1982
79P-0122	Museum of Arts and Sciences, 4182 Forsyth Rd., Macon, GA 31210.	Golden Scanner System 1 and laser light shows	May 19, 1980	May 19, 1982
79P-0171	Infinity Projections, Inc., 337 Jupiter Drive, Littleton, CO 80124.	Infinity Projector Model 8155-4 and laser light shows utilizing the Model 8155-4 projector.	May 20, 1980	May 20, 1982
79P-0192	Jacksonville Museum of Arts and Sciences, 1025 Gulf Life Drive, Jacksonville, FL 32207.	ABP Light Show Projector One and laser light shows	June 26, 1980	June 26, 1982
79P-0193	Wet Dream Productions, 807 N. 9th Ave., Maywood, IL 60153.	Wet Dream Productions Laser Light Show incorporating the Laser Presentations Model LPI-15A projector.	May 9, 1980	May 9, 1982
79P-0204	The Disneyland Hotel, 1150 Cerritos Ave., Anaheim, CA 92803.	"Still Green" Disneyland Hotel Laser Sculpture, incorporating laser projectors Models A, B and C.	Sept. 9, 1980	Sept. 9, 1985
79P-0236	Merlin Viewsic Laser Visuals, 323 North Beverly Drive, Suite #9, Beverly Hills, CA 90210.	Merlin Mark IIa and Mark IIb projectors and laser light shows	May 20, 1980	May 20, 1982
79P-0311	Micro Logic Corporation, P.O. Box 174, Hackensack, NJ 97602.	Micro Laser Models 1 and 3 and laser light shows	May 19, 1980	May 19, 1982
79P-0346	Laser Vision Productions, Inc., 72-01 Shawnee Ave., Yonkers, NY 10710.	Laser Visions Productions Show	May 19, 1980	May 19, 1982
79P-0398	Orpheus, 1203 Buttemut St., Syracuse, NY 13208	Laser light shows by Orpheus utilizing the SFC 2000 Series Laser Light Show Display System.	June 5, 1980	June 5, 1982
79P-0462	Laser Systems Development, Corporation, 17 E. Bijon St., Colorado Springs, CO 80903.	Model R-2, C-3 and C-3(a) Laser Projection System and laser light shows utilizing the projectors.	Feb. 20, 1980	Aug. 20, 1982
79P-0421	InterScience Technology, 23801 Ladrillo St., Woodland Hills, CA 91367.	Model 400 Series, 300 Series and 100 Series Laser Projection Systems and laser light shows.	May 30, 1980	May 30, 1982
80P-0008	M.A.S.S. Laser, Inc., 1332 William St., Montreal, Quebec H3C-1R5, CANADA.	Bus-001 with five control 558-K krypton ion laser projectors and laser light shows.	May 6, 1980	May 6, 1982
80P-0037	School of Music, University of Iowa, Iowa City, IA 52242	Video Laser III Projector and laser light shows	May 1, 1980	May 1, 1982
80P-0036	The Adler Planetarium, 1300 South Lake Shore Drive, Chicago, IL 60605.	Video/Laser IV Projector and laser light shows	May 9, 1980	May 9, 1985
80P-0055	The Laser People, P.O. Box 771, Ocean City, MD 21842	"The Laser People" laser light shows	May 1, 1980	May 1, 1982
80P-0065	Laser Concert Productions, 26541 Valpariso, Mission Viejo, CA 92691.	The Laser Fantasy Show	June 4, 1980	June 4, 1982
80P-0100	Coherent Innovations, Inc., Norstar Theater, Hamm Bldg., 28 West 7th St., St. Paul, MN 55102.	"Rainbow" Projectors and laser light shows utilizing "Rainbow" Projectors.	June 6, 1980	June 6, 1982
80P-0114	Laser Fair, Inc., P.O. Box 903, Sterling, CO 80751	Laser light shows incorporating the Laser Presentations Projectors LP-4 or LP-4K(1).	June 4, 1980	June 4, 1982
80P-0131	Electronic Counter Company, 318 Hancock St., San Diego, CA 92110.	Laser Projector Model No. 3600 and laser light shows	June 10, 1980	June 10, 1982
80P-0132	Busch Entertainment Corporation, 2020 Pocahontas Trial, Williamsburg, VA 23185.	Kaleidoscope Laser Light Show	June 26, 1980	June 26, 1982

In accordance with § 1010.4, the application and all correspondence (including the written notice of approval) on the various applications have been placed on public display under the designated docket number in the Dockets Management Branch, Food and Drug Administration (address above), and may be seen in that office

between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 7, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-23625 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81D-0173]

Compressed Medical Gases; Good Manufacturing Practice Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a guideline on the preparation of compressed medical gases (CMG's) that specifies practices and procedures which the agency views as acceptable means of complying with certain sections of the current good manufacturing practice (CGMP) regulations for human and veterinary drug products. The guideline is intended to inform interested persons of these acceptable practices to facilitate compliance with the regulations, and to assure the quality of compressed medical gases.

DATE: Effective August 18, 1981, producers of CMG's may rely on the procedures specified in this guideline as acceptable means of complying with the sections of the CGMP regulations cited in the guideline.

ADDRESSES: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the guideline can be obtained from the Division of Drug Manufacturing (HFD-320), Food and Drug Administration, Rm. 9B09, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Clifford G. Broker, Bureau of Drugs (HFD-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5307.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is making available a guideline on the production of CMG drug products. The guideline is intended to inform interested persons of practices which, in the opinion of the agency, constitute compliance with certain sections of the CGMP regulations for drugs (21 CFR Part 211). The guideline has been prepared by the Bureau of Drugs.

In the **Federal Register** of September 29, 1978 (43 FR 45014), FDA published substantial revisions of the CGMP regulations for finished human and veterinary drug products (21 CFR Parts 210 and 211). These "umbrella" regulations contain the minimum current good manufacturing practices for the preparation of all drug products intended for use in humans or animals. Under the Federal Food, Drug, and Cosmetic Act, a drug is considered to be adulterated unless the methods used in its manufacture, processing, packing, and holding, and the facilities and controls used therefore, conform to CGMP.

In the preamble to the revised CGMP regulations the agency stated that it would propose specific CGMP regulations for compressed medical gases in the future. FDA has carefully reconsidered the need for additional specific CGMP regulations for compressed medical gases, and has concluded that they are not necessary at this time. FDA believes that the objectives of such additional regulations, i.e., to assure the quality of CMG's, can be met by clarifying those portions of the umbrella CGMP regulations which have generated questions concerning their applicability to CMG's. The agency has therefore prepared a guideline which clarifies the provisions in question.

The guideline is based on information gathered through FDA's establishment inspections of CMG firms conducted over the past 17 years, a 1973 special inspectional survey of such firms, a 1980 series of information gathering inspections conducted by the agency, and three meetings held with the representatives of the Compressed Gas Association (CGA). Copies of documents relating to these meetings, including summary minutes and the agenda for discussion, are on file with the Dockets Management Branch, Food and Drug Administration, (address above).

The guideline summarizes the requirements of the sections of the CGMP regulations which have generated questions regarding their applicability to the preparation of CMG's. Each summary is then followed by a discussion of practices and procedures which FDA considers to be acceptable means of complying with the particular requirement of the regulation. The individual responsible for maintaining the guideline is the Director, Division of Drug Manufacturing (HDF-320).

This notice is issued under § 10.90(b) (21 CFR 10.90(b)) which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. The agency advises that the guideline for CMG's complies with the sections of the CGMP regulations cited in the guideline and may be relied upon by a person to meet the requirements of those sections. If a person chooses to depart from the practices set forth in a guideline, that person may discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Copies of the guideline can be obtained from the Division of Drug Manufacturing (HFD-320), Food and Drug Administration, Rm. 9B09, 5600 Fishers Lane, Rockville, MD 20857.

Interested persons may submit written comments on the guideline to the Dockets Management Branch, Food and Drug Administration. Comments will be considered in determining the need for amending the guideline. Comments should be in two copies except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 11, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-24007 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[FDA-225-81-7000]

Cooperative Research Program on Nonruminant Animals; Memorandum of Understanding With U.S. Department of Agriculture, Science and Education Administration (SEA), Nonruminant Animal Nutrition Laboratory, Animal Science Institute

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding (MOU) with the U.S. Department of Agriculture, Science and Education Administration (SEA), Monruminant Animal Nutrition Laboratory, Animal Science Institute. the purpose of the memorandum is to conduct a cooperative research program in connection with the use of drugs and feed additives in the diets of nonruminant animals.

DATE: The memorandum of understanding became effective July 21, 1981.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernment and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: FDA's policy is to publish in the **Federal Register** all agreements and memoranda of understanding between FDA and others (21 CFR 20.108(c)). Therefore, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between The U.S. Department of Agriculture, Science and Education Administration (SEA), Nonruminant Animal Nutrition Laboratory, Animal Science Institute and The Food and Drug Administratin (FDA)

I. Purpose

The participating organizations have agreed to conduct a cooperative research program in connection with the use of drugs and feed additives in the diets of nonruminant animals.

II. Background

At present, the Food and Drug administration (FDA) facilities for housing agriculture production animals on studies testing drugs and feed additives are too small to conduct production studies. This agreement is needed to assure that adequate facilities are made available and to provide an opportunity for scientific personnel from the U.S. Department of Agriculture, Science and Education Administration (SEA) Nonruminant Laboratory Animal Science Institute and FDA, Bureau of Veterinary Medicine (BVM) to cooperate in research efforts which are of interest to both agencies.

III. Substance of the Agreement

A. FDA Agrees to:

1. Provide scientific personnel for the purpose of designing, conducting, supervising, and cooperating in experiments, studies, and programs.

2. Provide experimental animals as required.

3. Furnish feed and drugs as required.

4. Provide cages and brooders as required.

5. Provide swine metabolism crates as required.

6. Provide expendable supplies as required.

B. SEA Agrees to:

1. Provide scientific personnel for the purpose of designing, conducting, supervising, and cooperating in the experiments and programs.

2. Provide space for chick brooders.

3. Provide space for finishing batteries for chickens and turkeys.

4. Provide experimental animals (swine) and space as required.

5. Furnish technical and program assistance as required.

6. Provide expendable supplies as required.

C. It is mutually agreed:

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.

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. Either party shall be free to supply the required nonexpendables, i.e., animal cages, feeding bunkers, feed containers, etc., which shall remain the property of the supplying party.

5. This memorandum of understanding (MOU) 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 appropriated departmental rules and regulations.

6. The responsibilities of the cooperating parties are contingent upon funds being available from which expenditures may be legally made. I8a3IV. Names and Addresses of Participating Agencies

U.S. Department of Agriculture, Science and Education Adminisrtation, Nonruminant Animal Nutrition Laboratory, Animal Science Institute, Beltsville, MD 20705.

Food and Drug and Drug Adminstration, Bureau of Veterinary Medicine, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. *Liaison Officer for SEA:* Chief, Nonruminant Animal Nutrition Laboratory, (Currently Dr. Lowell T. Frobish), Animal Science Institute, Agricultural Research Center, Bldg. 200, Beltsville, MD 20705, 301–344–2222.

B. *Liaison Officer for FDA:* Chief, Animal Nutrition Branch, (Currently Dr. David D. Wagner, Acting), Division of Veterinary Medical Research, Bldg. 328A, Beltsville, MD 20705, 301–344–2556.

VI. Period of Agreement

This memorandum of understanding shall become effective upon the date of final signature, and shall continue until Novembver 7, 1985, but may be terminated by mutual agreement at any time. Upon termination, property contributions shall be returned to the contributing party unless the other party purchases the contributed property at current market value.

Approved and accepted for the Science and Education Administration.

Arthur H. Nies,

Deputy Director, Administrative Management, Science and Education.

Date: July 8, 1981.

Approved and accepted for the Food and Drug Administration.

Joseph P. Hile,

Associated Commissioner for Regulatory Affairs, Food and Drug Administration.

Date: July 21, 1981.

EFFECTIVE DATE. This memorandum of understanding became effective July 21, 1981.

August 11, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81–2400 Filed 8–17–81; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80P–0449]

Nomenclature of Radiopharmaceutical Kits; Availability of Petition and Request for Comment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a petition requesting, among other things, that FDA change the nonproprietary name for radiopharmaceutical kits. The agency requests comments on this petition from all interested persons.

DATE: Comments by November 16, 1981.

ADDRESS: Written comments on the petition and requests for copies of the petition should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: On October 24, 1980, a citizen petition was filed under § 10.30 (21 CFR 10.30) of FDA's procedural regulations by the law firm of Sonnenreich and Morrell, on behalf of the Amersham Corp., Mallincrodt, Inc., Medi-Physics, Inc., and New England Nuclear Corp. The petition

requests FDA to change the nonproprietary name for radiopharmaceutical kits to "the generic name of the kit without designation of the nuclide," or in the alternative, "kit for the preparation of TC 99m (specific preparation appliable)". In addition, the petition requests the agency to communicate the name change to the United States Adopted Names (USAN) Council and other relevant organizations. If the name change is not accepted, the petition requests FDA to initiate discussion with Canadian health authorities to arrange a solution which will permit radiopharmaceutical kit labeling that is suitable for distribution in Canada and the United States. Further, the petition requests the agency to establish a liaison among industry, professional groups, and Canadian health authorities to coordinate nomenclature and labeling content for radiopharmaceuticals and other products.

Radiopharmaceutical kits have been widely marketed for use in diagnostic procedures in nuclear medicine for over a decade. When shipped in interstate commerce the kits consist of nonradioactive materials and components. Although the nonradioactive material and components contained in the kit may differ, all the kits are treated with a solution of sodium pertechnetate TC 99m at the site of intended use, usually by a nuclear pharmacy, to yield an active radiopharmaceutical agent. All of the nonradioactive material and components marketed as one product are commonly referred to as a "kit" or "reagent kit".

Under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)), a label of a drug product (including a radiopharmaceutical kit) must bear its "established name," if there is one, to the exclusion of any other nonproprietary name. The term "established name" is defined in the same section as (1) an official name designated by the agency, or (2) if an official name has not been designated, then the official title of a drug recognized in an official compendium, or (3) if neither (1) nor (2) applies, then the common or usual name of the drug. Although FDA has not designated an official name for radiopharmaceutical kits, by agreement between FDA and the USAN Council, the nonproprietary name for the nonradioactive kit is the name of the active agent produced by the kit (the USAN) plus the word "kit". For example, "Technetium TC 99m Albumin Aggregated" is produced by the reaction of sodium pertechnetate TC 99m with the ingredients of a kit labeled "Technetium TC 99m Albumin Aggregated Kit."

The petitioners request that the nonproprietary name for radiopharmaceutical kits, hereafter referred to as the FDA name, be changed to conform to current labeling requirements in Canada. Although Canadian regulations do not require one particular word formula in naming these kits, the regulations do set general parameters on kit labeling and description. The petitioners state that the Canadian authorities do not accept the current FDA name for radiopharmaceutical kits because the name incorrectly implies that all components needed to prepare the radiopharmaceutical drug, including the radioactive material, are contained in the kit. Thus, the petitioners request that the FDA name be changed to "the generic name of the kit without designation of the nuclide," or "kit for the preparation of TC 99m (specific preparation applicable)."

The petitioners list the following summary of grounds in support of their request:

a. The official name proposal will permit labeling initially designed for distribution in the U.S. to be equally applicable and lawful for distribution in Canada. As a result, (a) costs of duplicate labeling, which raise overall product costs in both U.S. and Canadian markets, are eliminated and (b) the potential for confusion and mislabeling, which the addition of more labels in the manufacturing workplace may cause, is forestalled.

b. The official name proposal is consistent with the principles of official name designation of USAN.

c. The official name proposal is consistent with FDA's statutory mandate to assure "desirable," "useful" official names (21 U.S.C. 358).

d. The official name proposal is not misleading, and, in fact, clarifies the product contents and thus is consistent with the statutory requirement for appropriate labeling (21 U.S.C. 352).

e. Favorable consideration of this petition will help effectuate the Congressional policy to encourge FDA regulatory actions which assist, wherever possible, U.S. drug manufacturers to export their products.

f. The Canadian government, through its flexible stance on this issue, deserves the reciprocal flexibility and cooperation of the U.S. pursuant to Title IV of the Trade Agreements Act of 1979, and other relevant multilateral and bilateral trade agreements.

g. The goal of the official name proposal is to reinforce the difference between radioactive and nonradioactive products. Existing federal laws and regulations of the Nuclear Regulatory Commission support this goal.

h. Where, as here, the proposed action has no adverse health effects, FDA should approve the subject petition pursuant to Presidential Executive Orders Nos. 11821, 11949 and 12044 which declare the principle that federal regulation should carefully reflect any resulting economic impact.

To assist the agency in its consideration of the request made in the petition, FDA is asking for comments on the petition as well as recommendations on the naming of radiopharmaceutical kits. Because this notice is a summary of the petition only, interested persons are advised to obtain a copy of the petition from the Dockets Management Branch (address below) before commenting on it. The agency is also interested in the current labeling practice of U.S. manufacturers who distribute their radiopharmaceutical drug products in Canada. It is the agency's understanding that most drug products distributed throughout Canada contain bilingual labeling because in Quebec Province labeling is required to be written in French; a factor which, if true, has some bearing on whether it is only the Canadian/FDA name disparity which necessitates costly duplicate labeling for products distributed in both countries. In addition, the agency is requesting information concerning any economic impact which may result if the agency decides, in light of the comments received on the petition, to accept the request for nomenclature change for radiopharmaceutical kits. Specifically, the agency is interested in the cost of label changes for these products, estimation of the amount of time which would be needed to make the label changes, as well as any long-term cost benefits which may result from a name change.

Copies of the petition are available on request from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Interested persons may submit written comments on the petition by November 16, 1981, to the Dockets Management Branch at the address above. Two copies of all comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 11, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-24006 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80P-0244/CP]

Tomato Juice Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the amendment and extension of a temporary permit issued to Keystone Foods, Inc., to market test tomato juice from concentrate. This action enables Keystone Foods, Inc., to improve the quality of information to be derived from the market test by expanding the areas of distribution.

DATES: This amended permit is effective on August 18, 1981, and shall terminate either on the effective date of an affirmative order ruling on the FDA proposal to amend the identity standard for tomato juice, which was published in the **Federal Register** of May 9, 1978 (43 FR 19864), or 30 days after a negative order ruling on the proposal, whichever the case may be.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: A temporary permit was issued to Keystone Foods, Inc., under § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the **Federal Register** of September 2, 1980 (45 FR 58206). The permit covered limited interstate marketing tests of tomato juice from concentrate that deviated from the standard of identity prescribed for tomato juice under § 156.145 (21 CFR 156.145). The finished product contains not less than 5.5 percent by weight of tomato soluble solids, which is equivalent to a single-strength tomato juice normally found in the marketplace. The existing permit provided for the temporary marketing of a total of 100,000 cases of twelve 46-ounce containers, 25,000 cases of twenty-four 32-ounce containers, and 10,000 cases of forty-eight 5½-ounce containers of the product to be distributed in the States of Alabama, Arizona, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin, and the District of Columbia.

Keystone Foods, Inc., has requested that its existing temporary permit be extended and amended by expanding the areas of distribution. The company has requested that its temporary permit be extended for the duration of the administrative proceedings pertaining to the proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). The proposed amendment to the standard of identity would, among other things, (1) permit the use of concentrated tomato juice to prepare a single-strength tomato juice product, (2) require the name "tomato juice from concentrate" when concentrated tomato juice is used in the preparation of the canned juice, (3) establish in the identity standard a minimum tomato soluble solids requirement of 5.5 percent, by weight, for the product made from concentrate, and (4) require label declaration of all optional ingredients.

FDA concludes that it will be in the interest of consumers to extend the time period of the temporary permit to allow market testing of 35,000 cases of twelve 46-ounce cans and 6,000 cases of twelve 32-ounce glass bottles of the product per month, in the District of Columbia and the States of Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

Under § 130.17, all interested persons may participate in the market test under the conditions that apply to Keystone Foods, Inc., including the labeling requirements and the amounts to be distributed. The designated areas of distribution do not apply to the interested persons. Any interested person who elects to participate in the extended market test shall notify FDA in writing of that fact, the amount to be distributed, and the area of distribution, and shall submit, along with this notification, the labeling under which the food is to be distributed.

This permit extension, as issued to Keystone Foods, Inc., and any others who participate in accordance with the provisions set forth in this notice, is effective on August 18, 1981, and expires either on the effective date of an affirmative order ruling on the FDA proposal of May 9, 1978, or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: August 11, 1981.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-24000 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81F-0210]

Diversey Wyandotte Corp., Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that the Diversey Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of elemental iodine, *alpha*-[*p*-(1,1,3,3,-tetramethylbutyl)-phenyl]*omega*-hydroxypoly(oxyethylene) and *alpha*-alkyl(C_{12}-C_{15}) *Omega*-hydroxy[poly(oxyethylene)poly(oxypropy as components of a sanitizing solution to be used on food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1H3561) has been filed by the Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that the food additive regulations be amended to provide for the safe use of elemental ioding, *alpha*-[*p*-1,1,3,3,-tetramethylbutyl]phenyl]*omega*-hydroxypoly-(oxyethylene) and *alpha*-alkyl(C_{12}-C_{15}) $_{Omega}$-hydroxy[poly(oxyethylene)poly(oxypropy as components of a sanitizing solution to be used on food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental

impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: August 6, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-24002 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81F-0222]

Rhone-Poulenc, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Rhone-Poulenc, Inc. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B3545) has been filed by Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017, proposing that the food additive regulations be amended to provide for the safe use of stearoylbenzoylmethane as a stabilizer for polyvinyl chloride polymers in contact with food.

The agency has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-24003 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 81F-0209]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a polymer derived from *N*-vinyl pyrrolidone combined with copolymers derived from the mixed alkyl (C_{12}-C_{15}, C_{16}, C_{18}, C_{20}, and C_{22}) methacrylate esters, butyl methacrylate, isobutyl methacrylate, and methyl methacrylate, as components of defoaming agents in the manufacture of paper and paperboard intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0B3527) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that Part 176 of the food additive regulations (21 CFR Part 176) be amended to provide for the safe use of a polymer derived from *N*-vinyl pyrrolidone combined during its polymerization with copolymers derived from the mixed alkyl (C_{12}-C_{15}, C_{16}, C_{18}, C_{20}, and C_{22}) methacrylate esters, butyl methacrylate, isobutyl methacrylate, and methyl methacrylate; the combined polymer contains no more than 5 weight percent polymer units derived from *N*-vinyl pyrrolidone as components of defoaming agents used in the manufacture of paper and paperboard intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: August 6, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-24005 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80G-0006]

State Agricultural Experiment Stations; Rutgers University and Oregon State University; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the withdrawal without prejudice of a petition proposing that ammonium lignin sulfonate used as a pear flotation agent in packaging house dump tanks is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.1), State Agricultural Experiment Station, Rutgers University, Office of IR-4, P.O. Box 231, New Brunswick, NJ 08903, and State Agricultural Experiment Station, Oregon State University, Corvallis, OR 97331, have withdrawn their petition (7G0090), notice of which was published in the **Federal Register** of February 22, 1980 (45 FR 11911) proposing that ammonium lignin sufonate used as a pear flotation agent in packaging house dump tanks be affirmed as GRAS.

Dated: August 6, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-24004 Filed 8-17-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W-23824]

Wyoming; Order Providing for Opening of Land

August 7, 1981.

1. By orders dated June 21, 1972, and December 5, 1972, (Power Site Cancellation No. 274), the Federal Energy Regulatory Commission vacated the lands withdrawn for Power Project No. 12, and Power Site Classification No. 345 as to the following described lands:

T. 53 N., R. 94 W.,
Sec. 13, NW¼SE¼, and S½SE¼.
T. 55 N., R. 94 W.,
Sec. 3, lots 3, 4, and 5;
Sec. 5, lot 2, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 9, SE¼NE¼, and NE¼SE¼;
T. 56 N., R. 94 W.,
Sec. 4, lots 1, 2, 4 to 7, inclusive, and 53;
Secs. 6 and 7, lot 65;
Sec. 9, lots 1 and 8;
Sec. 10, W½, and W½SE¼;
Sec. 15, lots 1 to 4, inclusive;
Sec. 17, lot 4;
Secs. 7, 8, 17 and 18, lots 58–D, 58–J, 58–K, 58–L, and 58–M;
Sec. 20, lots 3, 4, 7, 54–A, and 54–B;
Sec. 22, lots 1 and 5, and W½E½;
Sec. 27, lots 1 to 4, inclusive, and E½W½;
Sec. 28, lot 2;
Secs. 28 and 29, lots 45–A, and 45–B;
Sec. 34, lots 2 and 4, and E½SW¼;
T. 57 N., R. 94 W.,
Sec. 5, lot 5, and NW¼SW¼;
Sec. 6, lots 2, 3, 4, 6 to 14, inclusive, and SE¼SW¼;
Sec. 7, lots 1, 2, 3, SW¼NE¼, and E½W½;
Sec. 8, lots 1 to 4, inclusive, NE¼NW¼, NW¼SE¼, and SE¼SE¼;
Sec. 15, SW¼SW¼;
Sec. 16, lots 1 to 6, inclusive, NW¼NW¼; SE¼NW¼, and N½SE¼;
Sec. 17, lots 1, and 5;
Sec. 18, SW¼NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 19, E½SE¼;
Sec. 20, NW¼NW¼, SE¼SW¼, and S½SE¼;
Sec. 21, lot 1, and SW¼SW¼;
Sec. 22, lots 1, 5, 7, NE¼NE¼, and NE¼NW¼;
Sec. 23, SW¼NW¼, and NE¼SW¼;
Sec. 26, lots 1, 2, and SW¼;
Sec. 27, lots 1, 3, 4, 5, 6, and 8;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼NE¼, and S½NE¼;
Sec. 33, SW¼NE¼;
Sec. 34, lots 1, 8, and E½SE¼.
T. 58 N., R. 94 W.,
Sec. 19, lots 3, 4, 5, 6, 9, 10, 11 SE¼NW¼, and E½SW¼;
Sec. 30, lots 1, 2, 3, 4, E½W½;
Sec. 31, lots 1, 2, 3, 4, E½W½.
T. 56 N., R. 95 W.,
Sec. 2, lots 6, 47–A, 47–B, and 47–C.
T. 57 N., R. 95 W.,
Sec. 1, all.
T. 58 N., R. 95 W.,
Sec. 24, lot 1, SE¼NE¼, and E½SE¼;
Sec. 25, E½NE¼, NW¼SW¼, S½SW¼, NE¼SE¼, and S½SE¼;
Sec. 35, S½SW¼, and SE¼.

The land described contains approximately 7,984.70 acres in Big Horn County.

2. The following described lands restored from Power Site Classification No. 345 by BLM order dated November 18, 1956, and published in the **Federal Register** November 22, 1956, are hereby relieved of the restrictions imposed by the provisions of Section 24 of the Federal Power Act, supra, and the Act of August 11, 1955, (69 Stat. 681, 30 U.S.C. 621).

T. 57 N., R. 94 W.,
Sec. 29, SE¼NE¼.

The land described contains 40 acres in Big Horn County.

3. Under the authority delegated by Bureau of Land Management Order No. 701, dated July 23, 1964, (29 FR 10526), as amended, it is ordered that at 10:00 a.m. on September 21, 1981, the lands described in paragraph 1 shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

4. The public lands in this order have been, and will continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. Mining Laws.

5. The State of Wyoming has waived its right to select lands for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Marla B. Bohl,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 23965 Filed 8-17-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Environmental Assessment/General Management Plan Availability of Finding of No Significant Impact; Rio Grande Wild and Scenic River, Texas

An Environmental Assessment/General Management Plan and a Draft Land Acquisition Plan for Rio Grande Wild and Scenic River, Brewster and Terrell Counties, Texas, were distributed and made available by publication in the **Federal Register** of February 19, 1981, and a News Release in local news media sources.

A Finding of No Significant Impact has now been completed and an alternative selected. Based on public review input received and on management objectives, Alternative III (the Terrell/Brewster County concerned citizens alternative) has been selected as the primary alternative. The proposal selected best provides a management strategy to insure all reasonable ways of achieving the intent of Congress and the management objectives of Rio Grande Wild and Scenic River.

Copies of the Finding of No Significant Impact are available at the following locations: Rio Grande Wild and Scenic River, c/o Big Bend National Park, Big Bend National Park, Texas 79834; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Post Office Box 728, Santa Fe, New Mexico 87501.

It is the conclusion of the National Park Service that the selected plan is not a major Federal action that will significantly affect the human environment; therefore, no environmental impact statement will be prepared. Following public review of the Finding of No Significant Impact, a final plan will be prepared and implemented.

Dated: August 6, 1981.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 81-24059 Filed 8-17-81; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with the Town of Truro authorizing it to continue to provide concession facilities and services for the public at Cape Cod National Seashore for a period of approximately fifteen (15) years from date of execution through December 31, 1996.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the

North Atlantic Regional Office, National Park Service, 15 State St., Boston, MA 02109.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1979. The concessioner has continued to perform these obligations in a satisfactory manner at the request of the National Park Service. Therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Town of Truro, as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Town of Truro is substantially equal to others received. In the event a responsive proposal superior to that of Town of Truro (as determined by the Secretary) is submitted, Town of Truro, will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Town of Truro. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be post marked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, for information as to the requirements of the proposed contract.

Dated: August 7, 1981.

Anne T. Barron,

Acting Regional Director, North Atlantic Region.

[FR Doc. 81-24058 Filed 8-17-81; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 7, 1981. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 2, 1981.

Carol Shull,

Acting Keeper of the National Register.

ALASKA

Minto Central Places and Cemeteries Thematic Resources. Reference—see individual listings under Yukon-Koyukuk Division.

Yukon-Koyukuk Division

Minto vicinity, *AHRS Site No. FAI-024 (Minto Central Places and Cemeteries Thematic Resources)*

Minto vicinity, *AHRS Site No. FAI-167 (Minto Central Places and Cemeteries Thematic Resources)*

Minto vicinity, *AHRS Site No. FAI-168 (Minto Central Places and Cemeteries Thematic Resources)*

CALIFORNIA

Alameda County

Berkeley, *City Hall* 2134 Grove St.

Merced County

Atwater, *Bloss Mansion (George S. Bloss House)* 1020 Cedar Ave.

Mono County

Benton vicinity, *Archeological Site CA-MNO-542,* SE of Benton

FLORIDA

Palm Beach County

Lake Park, *Kelsey City City Hall,* 535 Park Ave.

NEBRASKA

Colfax County

Schuyler, *Colfax County Courthouse,* Off NE 15

Schuyler, *Schuyler City Hall,* 1020 A St.

Dodge County

North Bend, *North Bend Carnegie Library,* 140 E. 8th St.

Scotts Bluff County

Scottsbluff, *Scottsbluff Carnegie Library,* 106 E. 18th St.

NEVADA

Mineral County

Hawthorne, *Mineral County Courthouse,* 551 C St.

OKLAHOMA

Hughes County

Holdenville, *Holdenville City Hall,* 102 Greek St.

Johnston County

Tishomingo, *Poe, Bessie, Hall,* Murray State College campus

WISCONSIN

Monroe County

Sparta, *Sparta Free Library,* Court and Main Sts.

Sheboygan County

Sheboygan, *Third Ward School,* 1208 S. 8th St.

[FR Doc. 81-23490 Filed 8-17-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

August 13, 1981.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intended to perform nonmember, non-exempt, interstate transportation must file the Notice, form BOP-102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Office of Consumer Protection, Washington, D.C. 20423. The Notices are filed in Ex Parte No. MC-75 (Sub No. 1) and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Complete Legal Name of Cooperative Association or Federation of Cooperative Associations: Cornucopia Lines, Inc.

Principal Mailing Address [Street No., City, State, and Zip Code]: P.O. Box 2217, Fullerton, CA 92633.

Where Are Records of your Motor Transportation Maintained [Street No., City, State and Zip Code]: Donato Guerra 900 Sur.—Col. Guadalupe—Culiacan Sinaloa, Mexico.

Person To Whom Inquiries and Correspondence should be Addressed (Name and Mailing Address): Jose Zuniga, P.O. Box 2217, Fullerton, CA 92633.

Complete Legal Name of Cooperative Association or Federation of Cooperative Associations: Declaration Express, Inc.

Principal Mailing Address [Street No., City, State, and Zip Code]: P.O. Box 2217, Fullerton, CA 92633.

Where Are Records of your Motor Transportation Maintained [Street No., City, State and Zip Code]: Donato Guerra 900 Sur.—Col. Guadalupe—Culiacan Sinaloa, Mexico.

Person To Whom Inquiries and Correspondence should be Addressed (Name and Mailing Address): Jose Esqueda, P.O. Box 2217, Fullerton, CA 92633.
Complete Legal Name of Cooperative Association or Federation of Cooperative Associations: Independent Express, ltd.
Principal Mailing Address (Street No., City, State, and Zip Code): P.O. Box 2217, Fullerton, CA 92633.
Where Are Records of your Motor Transportation Maintained (Street No., City, State and Zip Code): Donato Guerra 900 Sur.—Col. Guadalupe—Culiacan Sinaloa, Mexico.
Person To Whom Inquiries and Correspondence should be Addressed (Name and Mailing Address): Jose Zuniga or W. D. Bennett, P.O. Box 2217, Fullerton, CA 92633.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-24013 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte MC-19 (Sub-No. 8)]

Bekins Van Lines Co.; Petition for Relief

AGENCY: Interstate Commerce Commission.

ACTION: Approval of petition.

SUMMARY: Bekins Van Lines Co. filed a petition for relief from the requirement in 49 CFR 1056.7(a) that every prospective shipper be furnished with the Form BOp–103 publication, *Summary of Information For Shippers of Household Goods.* Petitioner further requested that it be permitted instead to furnish prospective shippers the Form OCP–100 publication, *Your Rights and Responsibilities When You Move.*

The Commission has revised the operational rules in Title 49, Code of Federal Regulations, applicable to household goods carriers. The revised regulations provided for the Form OCP–100 to be distributed to shippers in place of the BOp–103 and Public Advisory No. 4. The June 9, 1981, effective date of the revised regulations was stayed by order of the U.S. Court of Appeals, Seventh Circuit, on June 4, 1981, and remains stayed. The regulations in effort prior to the stay remains in effect. Under provisions of the Household Goods Transportation Act of 1980, petitioner lawfully offers to provide binding estimates and guaranteed pick up and delivery dates to shippers whereas the BOp–103 states that estimates are not binding and makes no mention of guaranteed service dates. The Form OCP–100 publication was written after passage of the Household Goods Transportation Act of 1980 and advises shippers that carriers may provide binding estimates and guaranteed service dates.

Petitioner's request that the requirements of 49 CFR 1056.7(a) be waived is being granted. Petitioner may voluntarily furnish prospective shippers with the Form OCP–100 publication.

EFFECTIVE DATE: August 11, 1981

FOR FURTHER INFORMATION CONTACT: John H. O'Brien, (202) 275–7148; Ray G. Atherton, Jr., (202) 275–7844.

SUPPLEMENTARY INFORMATION: By petition filed July 23, 1981, Bekins Van Lines Co. (Bekins) seeks a waiver of the requirement contained in 49 CFR 1056.7(a) that every prospective shipper be furnished two informational publications, Form BOp–103, *Summary of Information For Shi of Household Goods,* and Public Advisory No. 4, *Lost and Damaged Household Goods,* which were written to relate to the Part 1056 regulations in effect prior to passage of the Household Goods Transportation Act of 1980. Bekins further requests permission to furnish shippers a new publication, Form OCP–100, *Your Rights and Responsibilities When You Move,* which relates to the revised Part 1056 regulations adopted by the Commission to reflect the statutory changes incorporated in the Household Goods Transportation Act of 1980.

It was intended that the revised regulations, including the requirement for the Form OCP–100, would become effective on June 9, 1981. This date was stayed, and remains stayed at this time by order of the U.S. Court of Appeals, Seventh Circuit, to permit review of the Commission's order adopting the revised regulations.

Under the provisions of Section 4 of the Household Goods Transportation Act of 1980, Bekins is now offering to provide binding estimates and guaranteed pick up and delivery dates to shippers. At the time the Form BOp–103 publication was last revised carriers were not permitted to provide such services and shippers were so advised in the publication.

Bekins asserts that it may lawfully offer binding estimates and guaranteed service dates while at the same time it is being required to furnish a publication prescribed by the Commission which states that estimates are not binding and that carriers are responsible only for providing service with reasonable dispatch. It is represented that this inconsistency is causing shippers confusion.

The carrier's frustration with this situation is recognized. We agree that the requirement for distribution of the Form BOp–103 publication should be waived and we grant the requested relief from the requirements of 49 CFR 1056.7(a).

We cannot, however, require Bekins to furnish prospective shippers the Form OCP–100 publication. We have no objection to petitioner voluntarily furnishing copies of the Form OCP–100 publication to shippers as the information it provides is consistent with the law as amended by the Household Goods Transportation Act of 1980.

The petition is denied except to the extent granted herein.

Decided: August 11, 1981.

By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-24016 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 25982 (Sub-No. 2)]

Greyhound Corporation; Modification of Conditions

AGENCY: Intererstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting this proceeding to consider a request by the Greyhound Corporation (Greyhound) to modify conditions imposed in *Greyhound Corporation Securities,* 336 I.C.C. 575 (1970), prohibiting certain transactions between Greyhound and its controlled interstate carriers.

DATES: 1. Notices of intent to participate in this proceeding are due August 28, 1981. 2. Opening verified statements by Greyhound and any parties supporting the proposal are due September 30, 1981. 3. Verified statements in opposition are due October 21, 1981. 4. Greyhound's reply is due November 4, 1981.

ADDRESS: Send notices of intent to participate and other statements to: Section of Finance, Room 5414, Interstate Commerce Commission, 12th and Constitution Ave., NW

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275–7245.

SUPPLEMENTARY INFORMATION: In *Greyhound Corporation Securities,* 336 I.C.C. 575 (1970), the Commission imposed conditions that preclude Greyhound's subsidiary, Greyhound Lines, Inc. (Lines), from (1) making advances to affiliated companies, (2) encumbering any of its assets for noncarrier purposes or (3) engaging in any other intercompany transactions without the Commission's express

approval. These conditions were extended to all interstate carriers under Greyhound's control in Finance Docket No. 26056, *Greyhound Corporation Securities* (not printed), decided May 14, 1970.

In a letter-petition dated April 17, 1981, Greyhound requests that the conditions be modified to enable its subsidiary carriers to engage in these intercompany transactions without the Commission's approval, when the transaction is in furtherance of the carrier's business purposes and appears to serve the carrier's interests.[1]

Greyhound believes the modification would allow its controlled carriers greater flexibility in investing temporary cash surpluses generated from their operations. It claims that the requirement of prior approval for these intercompany transactions delays the investment of surplus cash and prevents maximum utilization of these funds, with today's rapidly changing interest rates and short-term investment yields.

The Commission rejected a similar proposal by Greyhound in *California Parlor Car Tours-Pur.-Greyhound*, 127 M.C.C. 605 (1979). Greyhound there sought to remove the conditions completely. The Commission determined that, because Greyhound's previous financial transactions had had an unhealthy effect on Lines and because of Lines' unique and significant position in the passenger bus industry, continued monitoring of the financial relationship between Greyhound and Lines would be in the public interest. As an alternative, the Commission suggested that Greyhound submit a proposal for maintaining a revolving fund from which short-term intercompany advances similar to commercial paper investments could be made. Greyhound has not yet submitted such a proposal or indicated why such a revolving fund would not satisfy its needs.

This proceeding is being instituted to consider Greyhound's proposal. The language in Greyhound's proposed modification of conditions is vague and subject to broad and varying interpretations. Greyhound and all other parties should address this issue and propose any alternative language which would be more appropriate.

[1] As modified, the conditions would read: *Unless it is in furtherance of the carrier's business purposes and appears to serve the carrier's interests*, interstate carriers under Greyhound's control shall not, without the express approval of the Commission, (i) make any advances to affiliated companies, (ii) encumber any of their assets for noncarrier companies, (iii) engage in any other intercompany transactions [Modifications underlined.]

Any person wishing to participate in the proceeding should file an original and one copy of a notice of intent to participate. The Commission will prepare and make available a service list which will contain the names and addresses of all persons participating in this proceeding. Since the former Bureau of Investigations and Enforcement was a party in *California Parlor Cars, Tours, supra*, its successor, the Office of Consumer Protection, will be designated a party to this proceeding.

Evidentiary statements and arguments of the parties are due on or before the dates set forth in the preamble to this notice. An original and 6 copies, if possible, of each statement shall be filed with the Commission, and one copy served upon each person on the service list.

In its verified statements in support of the proposal, Greyhound should explain any changed circumstances which would justify removal of the conditions, including reasons why the conditions are no longer necessary to protect the financial stability of its carrier subsidiaries and the public interest. Greyhound should also explain why a revolving fund such as that suggested in *California Parlor Car Tours, supra*, would not meet its needs.

Copies of this order shall be available to the public at the Office of the Secretary, and the order shall be published in the **Federal Register.**

It is ordered:

1. The Office of Consumer Protection shall participate in this proceeding.
2. The parties shall comply with the filing dates set forth in the preamble.
3. This order is effective on its date of publication in the **Federal Register.**

Dated: August 12, 1981.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Merganovich,

Secretary.

[FR Doc. 81-24015 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OPY-4-317]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: August 10, 1981.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

MC 141336 (Sub-1), filed July 30, 1981. Applicant: BUD'S MOVING & STORAGE, INC., Box 2108, Minot, ND 58701. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Ten So. Fifth St., Minneapolis, MN 55402, (612) 340–0808. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 154766, filed July 24, 1981. Applicant: JOHN A. VERIHA, d.b.a. PAPER RECLAIM, Route 1, Box 271A, Porterfield, WI 54159. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 157286, filed July 23, 1981. Applicant: JOHN V. DONOVAN TRUCKING, INC., 139 Mystic Ave., Medford, MA 02155. Representative: Mary E. Kelley, 22 Stearns Ave., Medford, MA 02155, (617) 396–4090. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 157296, filed July 13, 1981. Applicant: CHEROKEE DISTRIBUTION, INC., Suite 204, Stag Building, 1530 Dunwoody Village Parkway, Atlanta, Georgia 30338. Representative: John W. Greer, III, 925 Healey Building, 57 Forsyth Street, Atlanta, Georgia 30303, (404) 523–1601. As a broker *of general commodities*, (except household goods), between points in the U.S.

MC 157386, filed July 29, 1981. Applicant: WENDELL B. WALCHER AND ADDIE D. WALCHER, 521 31 3/4 Road, Grand Junction, CO 81501. Representative: Wendell B. Walcher, (Same address as applicant) (303) 434–7588. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

[FR Doc. 81-24014 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 143]

Motor Carriers; Permanent Authority Decisions, Restriction Removals; Decision-Notice

Decided: August 13, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

FF 426 (Sub-1)X, filed July 29, 1981. Applicant: EXPRESS FORWARDING AND STORAGE CO. INC., 19 Rector Street, New York, NY 10006. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. Applicant seeks to remove restrictions in its Sub-No. 1 permit limiting service (a) to the forwarding of import or export shipments having an immediately prior or subsequent movement by water in the nonvessel operating (NVO) water common carrier service of carrier; and (b) against the forwarding of shipments moving to or from Puerto Rico or the Virgin Islands.

MC 14045 (Sub-5)X, filed July 27, 1981. Applicant: LOS ANGELES–YUMA FREIGHT LINES, INC., P.O. Box 4849, Kofa Station, Yuma, AZ 85364. Representative: Harold G. Hernly, Jr., 110 South Columbus Street, P.O. Box 1281, Alexandria, VA 22313. Applicant seeks to remove restrictions in its lead and in the operating rights acquired in No. MC–F–14601 to (1) broaden its commodity description from general commodities (with exceptions) to "general commodities (except classes A and B explosives)"; (2) broaden the irregular-route authority from "between Yuma, AZ, on the one hand, and, on the other, points in Arizona between 30 miles of Yuma," to "between points in Yuma County, AZ" in the lead; (3) authorize service to all intermediate points on regular route authority in MC–F–14601; and (4) expand off-route point authority from "points within 25 miles of Hyder and Roll, AZ," to "points in Yuma and Maricopa Counties, AZ" in MC–F–14601.

MC 47171 (Sub-217)X, filed July 28, 1981. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Applicant seeks to remove restrictions in its Sub-Nos. 193F, 195F and 197F certificates to broaden the commodity description to "general commodities, except classes A and B explosives" from general commodities, with usual exceptions.

MC 58923 (Sub-77)X, filed July 27, 1981. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road, SE, Atlanta, GA 30315. Representative: William W. West (same address as applicant). Applicant seeks to remove restrictions in its authority acquired in No. MC–F–14478F and referred to as MC–33426 and Sub-Nos. 5 and 6 certificates to (1) broaden the commodity descriptions in the lead and Sub-Nos. 5 and 6 from general commodities with exceptions to "general commodities (except classes A and B explosives)"; (2) replace Augusta and Savannah, GA, with Richmond and Chatham Counties, GA in the lead and Sub-No. 6; and (3) replace one-way with radial authority.

MC 76266 (Sub-151)X, filed August 3, 1981. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 215 South 11th Street, Minneapolis, MN 55403. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118.

Applicant seeks to remove restrictions in its Sub-Nos. 128, 134F, 138F, 139F, 142F, and 144F certificates to (A) broaden commodity descriptions to: Sub-No. 128, "metal products" from iron and steel articles; Sub-Nos. 134 (part 2) and 142, "food and related products" from foodstuffs; Sub-No. 138; "building materials" from doors, window hardware, locks, latches and closures; Sub-Nos. 139 and 144, "machinery" from furnaces; and Sub-No. 134 (part 1), remove the exception of "commodities in bulk"; (B) change one-way service to authorize radial service; (C) remove the restriction limiting transportation of shipments to that which originates at a specified origin in Sub-No. 128; and (D) replace the named facilities and points with county-wide authority; Sub-No. 128, Washington County, MN (facilities near Newport, MN); Sub-No. 134, Ramsey County, MN (facilities near South St. Paul, MN) and Pope County, AR (Russellville, AR); Sub-Nos. 138 and 139, Ramsey County, MN (facilities in Ramsey County, MN); and Sub-Nos. 142 and 144, Hennepin County, MN (facilities in Hennepin County, MN).

MC 97699 (Sub-53)X, filed August 3, 1981. Applicant: BARBER TRANSPORTATION CO., P.O.D. 1970, Rapid City, SD 57701. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. Applicant seeks to remove restrictions in its Sub-No. 51X certificate, paragraphs 1, 3, 4, 5, 6, 10, 23, 26, 29, 40, 42, 45, 49 and 50 by (1) expanding named off-route points to county wide off-route points as follows: in paragraph 1 Chalksbutte, Clough, Vale, Marcus, Fox Ridge and Shadehill Dam Site, SD, to Butte, Meade and Perkins Counties, SD; in paragraph 3 Fruitdale, SD, to Butte, and Lawrence Counties, SD; in paragraph 4, Pluma, SD, to Lawrence County, SD, in paragraph 5, Edgemont, Provo, Igloo and U.S. Ammunition Dump, SD to Fall River County, SD; in paragraph 6, Rapid City Airport to Pennington County, SD; in paragraph 10, Rock Valley, IA, to Sioux County, IA; in paragraph 23, Portage, IN, to Porter County, IN; in paragraph 26, Bullhead and Little Eagle, SD, to Corson County, SD; in paragraph 29 Hot Springs, SD, to Fall River County, SD, in paragraph 40 Lefor, ND, to Stark County, ND; in paragraph 42, Rosebud, Parmalee, Oral, Rocky Ford, Kyle, Allen, Porcupine, Manderson, Wounded Knee, and Slim Butte, SD, to Todd, Bennett, Fall River and Shannon Counties, SD; in paragraph 45, Underwood, IA, to Pottawattamie County, IA; in paragraph 49, Wanblee, Interior, Nemo and Cedar Pass Lodge, SD, to Washabaugh, Jackson and Lawrence Counties, SD; in paragraph 50 Colony, WY, to Crook County, WY.

MC 100463 (Sub-27)X, filed July 31, 1981. Applicant: SMITH TRANSPORT (U.S.) LIMITED, 150 Commissioners Street, Toronto, Ontario, CD N5A 3R9. Representative: William J. Hirsch P.C., 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. Applicant seeks to remove restrictions in its lead and Sub-Nos. 17, 23, 25 and 26 certificates to: (1) broaden commodity descriptions as follows: (a) in the lead and Sub-No. 26, from general commodities (with exceptions), to "general commodities, (except classes A and B explosives)"; (b) in the lead, from wood pulp to "lumber and wood products;" (c) in the lead and Sub-No. 17, from newsprint to "pulp, paper and related products;" (d) in the lead, from talc to "clay, concrete, glass or stone products and ores and minerals;" (e) in Sub-No. 25, from aluminum and aluminum products to "metal products; and (f) in Sub-No. 23, from silver bullion to "ores and minerals"; (2) in the lead and Sub-Nos. 17, 23 and 25, remove in foreign commerce restrictions (3) in lead and Sub-No. 25, in regular route authorities, remove restrictions against service to intermediate points allowing service to all intermediate points; (4) in lead and Sub-Nos. 17 and 23, replace one way with radial authority; (5) broaden city-wide authority to county-wide authority as follows: in the lead, Natural Bridge to Jefferson County, NY; Rouses Point to Clinton County, NY; Olean to Cattaraugus County, NY; Roosevelt Town, Balmat and Hailesboro to St. Lawrence Counties, NY; in Sub-No. 26, Syracuse to Onondaga County, NY; in Sub-No. 17 Dunkirk to Chautauqua County, NY; in Sub-No. 23, Perth Amboy to Middlesex County, NJ; (6) in lead and Sub-Nos. 17, 23 and 26, expand ports of entry from named points in NY to include all ports of entry located in NY; (7) broaden service to off-route points to include entire county as follows: (a) in the lead, 15 miles of Gouverneur, NY, to St. Lawrence County, NY; and points in NY and NJ within 25 miles of New York City to Middlesex, Union, Essex, Bergen, Hudson, Morris and Passaic Counties, NJ; and Richmond, Rockland, Bronx, New York, Kings, Queens, Nassau, Westchester, Putnam and Suffolk Counties, NY; and (b) in Sub-No. 26, Albany to Albany County, NY, Albion and Medina to Orleans County, NY, Buffalo to Erie County, NY, Canandaigua and Geneva to Ontario County, NY, Fairport and Rochester to Monroe County, NY, Lockport to Niagara County, NY, Palmyra to Wayne County, NY, and Waterloo to Seneca County, NY, (8) in Sub-No. 25, replace named facilities at Oswego, NY with Oswego County, NY; (9) in the lead and Sub-Nos. 25 and 26, remove restriction limiting transportation of shipments originating at or destined to points in Canada; (10) in lead, remove restriction against handling traffic destined to or from Canada through the Niagara Frontier; (11) in lead remove the restriction against the pick-up of limestone and talc.

MC 108449 (Sub-417)X, filed July 27, 1981. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Representative: W. A. Myllenbeck (same as applicant). Applicant seeks to remove restrictions in it Sub-No. 302F certificate to (1) broaden the commodity description from liquefied natural gas, in bulk, to "commodities in bulk", and (2) remove the exception of HI from its nationwide authority.

MC 111981 (Sub-29)X, filed July 31, 1981. Applicant: ROBIDEAU'S EXPRESS, INC., S.E. Corner Front & Oregon Ave., Ph:'adelphia, PA 19148. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4, 8, 13, 18, 19, 21, 24, 25, and 27 certificates to (1) broaden the commodity description from frozen and processed fruits and vegetables, fresh fruits and vegetables, frozen foods and fruit and vegetable juices, and foods, in its lead; bananas, frozen fruits and frozen vegetables, frozen prepared vegetables, fish and seafood frozen fish and seafood and frozen fish and seafood dinners, in its Sub-No. 4; meats and meat products and foods and frozen foods, in its Sub-No. 8; groceries, in its Sub-No. 13; food and food products, in its Sub-No. 18; food and food products, in its Sub-No. 19; foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products, in Sub-No. 21; foodstuffs, Sub-No. 24; foodstuffs, Sub-No. 25; and foods in Sub-No. 27; to "food and related products"; and from agricultural commodities in its Sub-No. 4, to "farm products"; and (2) remove commodity restrictions against transportation of particular commodities wherever they appear; and (3) remove restrictions limiting service to vehicles equipped with mechanical refrigeration and restrictions against commodities in bulk and commodities in bulk in tank vehicles wherever they appear; (4) replace all one-way authority with radial authority; (5) Sub-No. 13, authorize service to all intermediate points; and (6) remove facilities

limitations at and/or replace Williamstown, Camden, Perth, Amboy, Braddock, and Seabrook, NY, with Gloucester, Camden, Middlesex and Cumberland Counties, NJ, and Allentown, Ambler, Bethlehem, Easton, Doylestown and Manayunk, PA, with Lehigh, Montgomery, Northhampton, Bucks, Philadephia Counties, PA, in its lead; Doylestown, PA, with Bucks County, PA, Braddock, Glassboro, and Hammonton, NJ, with Gloucester and Atlantic Counties, NJ, and Wilmington, DE, with New Castle County, DE, in Sub-No. 8; Fogelsville, PA, with Lehigh County, PA, in Sub-No. 18; Curwensville, PA, with Clearfield County, PA, in Sub-No. 19; Scranton, and Allentown PA, with Lackawanna, and Lehigh Counties, PA, in Sub-No. 21, Mt. Airy, MD, with Carroll County, MD, in Sub-No. 24, and Crozet, VA, with Albemarle County, VA, in Sub-No. 25.

MC 116626 (Sub-15)X, filed July 30, 1981. Applicant: C. W. EANES, INC., RFD 1, Box 6, Gretna, VA 24557. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania & 13th St., NW, Washington, DC 20004. Applicant seeks to remove restrictions in its lead and Sub-Nos. 3, 4, 6, 7, 9, 11, 12F, 14F, and E–1 and E–2 certificates to (A) broaden commodity descriptions to: lead (sheet 2), and in Sub-No. 4, "machinery, and metal products" from agricultural machinery and implements and parts and attachments; and in each of the remaining certificates, "lumber and wood products" from lumber, hardwood flooring, wooden pallets and boxes, wooden desk skids, laminated truck flooring, landscape ties and timbers, treated wood products, and lumber, rough and dressed; (B) delete restrictions against the transportation of "plywood and veneer" from lumber in the lead and Sub-Nos. 3, 6, and E–1 and E–2, "other than hand" from agricultural machinery in the lead certificate, and "commodities which because of size and weight require the use of special equipment" in Sub-No. 4; and delete the restriction limiting service to movements "in foreign commerce only" in Sub-No. 6; (C) broaden one-way service to authorize radial service; and (D) broaden the named points and facilities location to county-wide authority: lead certificate, Mecklenburg County, NC (Charlotte, NC), Pittsylvania County, VA (Gretna, VA), and Lancaster and Mifflin Counties, PA (New Holland, Mountainville, and Belleville, PA); Sub-No. 6, Washington, County, TN (Johnson City, TN); Sub-No. 7, Charlotte County, VA (Keysville, VA); Sub-No. 11, Mecklenburg and Charlotte Counties, VA (facilities at Chase City and Keysville, VA) and Williamson County, IL (penitentiary at Marion, IL).

MC 117765 (Sub-322)X, filed July 27, 1981. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, Oklahoma City, OK 73147. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Applicant seeks to remove restrictions in its Sub-Nos. 85, 91, 95, 96, 103, 104, 131, 143, 165, 171 (in part), 191, 207, 216, 239F, 246F, 251F (in part), 259F, 263F, 276F to (1) broaden the commodity descriptions from composition board and materials, supplies and equipment used in the installation thereof in Sub-No. 85, building materials, gypsum and gypsum products and materials equipment and supplies (except liquid commodities, in bulk), used in the manufacture, installation of distribution thereof, in Sub-No. 91, carpet tacking strips in Sub-No. 95, component parts for mobile homes, in Sub-No. 96, mineral wool, mineral boards, mineral blocks and mineral sheets in Sub-No. 104, building materials, gypsum and gypsum products and materials and supplies (except liquid commodities, in bulk) used in the manufacture, installation or distribution thereof, in Sub-Nos. 131 and 143, insulating materials (except in bulk) in Sub-No. 165, roofing and roofing materials in Sub-No. 171, roofing in Sub-No. 191, mineral fiber, mineral fiber products, and insulating materials (except in bulk) in Sub-No. 207, perlite in Sub-No. 216, adhesives, wood fillers, and materials and supplies used in the manufacture, installation and distribution thereof (except commodities in bulk) in Sub-No. 239, roofing materials in Sub-No. 251F, building materials (except commodities in bulk) in Sub-No. 259F, acoustical tile and metal supports, composition tile and adhesive material in Sub-No. 263F, and plumbing goods, bathroom vanities and accessories and equipment, materials and supplies used in the manufacture and distribution thereof in Sub-No. 276F, to "building materials and materials, equipment and supplies used in the manufacture, installation and distribution of building materials"; (2) remove originating at or destined to restrictions in Sub-Nos. 131, 143, 259, and 276F; (3) remove in containers in bags restrictions in Sub-Nos. 95 and 216; (4) replace one-way with radial authority in Sub-Nos. 85, 95, 103, 104, 143, 165, 171, 191, 207, 216, 239, 246, 251, 259F, and 263F; (5) substitute counties for points and or facilities limitations in Sub-Nos. 91 and 131: Blaine County, OK for Southard, OK; Sub-Nos. 85 and 104: Washington County, MS for Greenville, MS; Sub-No. 95: Oklahoma County, OK for Oklahoma City, OK; Sub-No. 96: Harvey County, KS for Halstead, KS; Sub-No. 103: Kenosha County, WI for Bristol, WI; Sub-No. 165: McPherson County, KS for McPherson, KS; Sub-No. 171 (in part): Lincoln County, OK for Stroud, OK; Sub-Nos. 191, 246 and 251 (in part): Garvin County, OK for Wynnewood, OK; Sub-No. 207: Navarro County, TX for Corsicana, TX; Sub-No. 216: Fremont County, CO for Florence, CO; Sub-No. 239: Reno County, KS for Hutchinson, KS; Sub-No. 259: St. Louis and Jackson Counties, MO for St. Louis and Kansas City, MO; Dallas County, TX for Dallas, TX; Sub-No 263: Jeff Davis County, GA for Hazelhurst, GA; Lee and Hind Counties, MS for Tupelo and Jackson, MS; Sub-No. 276: Maricopa County, AZ for Phoenix, Arizona; San Bernardino County, CA for Redlands, California; Greene and Walton Counties, GA for Union Point and Monroe, GA; Jasper and Montgomery Counties, IN for Renssalaer and Crawfordsville, IN; Worchester County, MA for Leominster, MA; Wapello County, IA for Ottumwa, IA; Columbiana County, OH for Salem, OH; Lawrence County, PA for New Castle, PA; Medina and Navarro Counties, TX for Hondo and Corsicana, TX; and Milwaukee County, WI for Milwaukee, WI.

MC 124423 (Sub-12)X, filed July 24, 1981. Applicant: JET MESSENGER SERVICE, INC., P.O. Box 99, Metuchen, NJ 08840. Representative: W. C. Mitchell, 270 Lexington Avenue, New York, NY 10017. Applicant seeks to remove restrictions from its lead certificate to (1) remove all exceptions to its general commodities authority except class A and B explosives, (2) remove restriction to transportation in express service and against transportation of articles weighing in the aggregate more that 5,000 pounds from one consignor at one location to one consignee at one location on any one day, and (3) change city to county-wide authority from Wilmington, DE to New Castle County, DE.

MC 125297 (Sub-7)X, filed July 27, 1981. Applicant: FRANK'S TRANSPORT, INC., 5321 West River Road, Lorain, OH 44055. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. Applicant seeks to remove restrictions in its lead docket and in Sub-Nos. 2, 4, 5 and 6 certificates to (a) broaden the commodity descriptions in each to "commodities in bulk" from cement; (b) replace one-way authority with radial authority in the lead and Sub-Nos. 2, 4, and 5; (c) remove

restrictions limiting service from named facilities and to traffic originating at named plantsites in the lead docket and Sub-Nos. 4, 5, and 6; (d) remove restrictions limiting service to traffic originating at named plantsites, replace one-way authority with radial authority and remove restriction limiting service to shipments having had an immediately prior movement by rail or water in Sub-No. 4; (e) substitute citywide for countywide authority as follows: in Sub-No. 6F Ashtabula County (Ashtabula, OH), and in Sub-Nos. 4 and 5, Monroe County, OH (Dundee, OH).

MC 140968 (Sub-6)X, filed August 3, 1981. Applicant: VALLEY TRANSPORT, INC., Drayton, ND 58225. Representative: Stanley C. Olsen, Jr., Suite 307, 5200 Willson Road, Edina, MN 55424. Applicant seeks to remove restrictions in its Sub-Nos. 2, 3F, and 5F permits to (1) broaden the commodity descriptions to: Sub-No. 2, "food and related products" from sugar beet pulp and pellets, and to "ores and minerals" from lime rock; and Sub-Nos. 3 and 5, "such commodities as are dealt in or used by processors, manufacturers, and distributors of sugar" from sugar beet pulp, pellets, and from sugar; (2) remove the limitation of service to "traffic having a subsequent movement by water for export"; and (3) broaden the territorial description in each permit to authorize service between points in the U.S., under continuing contract(s) with a named shipper.

MC 141187 (Sub-22)X, filed July 23, 1981. Applicant: BLUFF CITY TRANSPORTATION, INC., P.O. Box 18391, Memphis, TN 38118. Representative: Clarence R. Haar, President (same as applicant). Applicant seeks to remove restrictions in its Sub-Nos. 2, 3, 4, 10F, 11F and 12F permits to (A) broaden the commodity descriptions to (1) "rubber and plastic products and materials, equipment, and supplies used in their manufacture and distribution" from (a) vinyl plastic and/or vinyl plastic products, and materials, equipment and supplies in Sub-Nos. 2 and 11F, (2) "rubber and plastic products, machinery and such commodities as are used by meatpackers and food processors in the conduct of their business" from plastic film, sheeting, bags and trays, and returned shipments of plastic film, sheeting, bags, and trays; food processing and packaging machinery and equipment, and component parts and accessories thereof, and returned shipments of food processing and packaging machinery and equipment and component parts and accessories thereof; bone cloth and aluminum clips, packaging supplies and plastic articles, and returned shipments; plastic articles, boneguard cloth and aluminum clips and returned shipments of the commodities named above; vinyl plastic and plastic articles, and returned shipments, in Sub-No. 3, (3) "metal products" from cast iron pipe fittings and rough iron castings, in Sub-No. 4, (4) "chemicals and related products" from plastic film, plastic bags, boneguard cloth and aluminum packaging clips; chemicals; and proprietary antifreeze preparations, in Sub-No. 10F, and (5) "building materials" from brick veneer, in Sub-No. 12F; (B) remove the restriction prohibiting, or limiting service to the transportation of traffic (1) to AK and HI, in all permits and (2) originating or terminating at a named point, in Sub-No. 3 (parts 6 through 9, 15 and 16); (C) remove the (1) plantsite restriction, in Sub-No. 3 (parts 1, 2 and 4); (2) "size or weight" restriction, in Sub-Nos. 3 and 4; and (3) "except commodities in bulk" restriction, in Sub-Nos. 2, 3, 4, 10F (parts 2 and 3) and 11F; and (D) authorize service between points in the U.S., under continuing contract(s) with named shippers, in all permits.

MC 148971 (Sub-5)X, filed July 30, 1981. Applicant: YOUNG'S EXPRESS, INC., 1501 N. Warwick Ave., Baltimore, MD 21216. Representative: Brian S. Stern, 5411-D Backlick Rd., Springfield, VA 22151. Applicant seeks to remove restrictions in its MC-134280 Sub-Nos. 1F, 4F, 6F, and 8F permits and MC-148971F certificate to (1) broaden the commodity description from meats, packinghouse products, and commodities used by packinghouse (except commodities in bulk in tank vehicles), as described in Section A of appendix I to the report in Descriptions in Motor Carrier Certificates, 67 M.C.C. 209 and 766, seasoning or spices, advertising matter, forms, racks, signs and store displays, and commodities used in the manufacture, sale, or distribution of meats and packinghouse products as described above, to "such commodities as are dealt in or used by manufacturers or distributors of food and related products" in Sub-No. 1; from empty used containers, used trailers, and used trailer chassis, to "containers, trailers and trailer chassis" in Sub-No. 4; from ferrous scrap metals to "waste or scrap materials not identified by industry producing" in Sub-No. 16; from cold rolled and galvanized steel, in coils, rolled and gavanized steel, in sheets and in coils, and rolled steel to "metal products" in Sub-No. 8; (2) remove "except in bulk" in Sub-No. 4; (3) remove a requirement of a prior or subsequent movement by water or rail in Sub-No. 4 and MC-148971F; and (4) broaden the territory descriptions in each permit to between points in the U.S. under continuing contract(s) with named shippers.

[FR Doc. 81-24048 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplyfing grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither wa major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new

entrants will be subject to the issuance of an effective notice seting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-229

Decided: August 11, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2900 (Sub-450), filed July 23, 1981. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522-0900. Over regular routes, transporting (A) *general commodities*, (1) between Portland, OR, and San Francisco, CA, from Portland over U.S. Hwy 99E to junction Interstate Hwy 5, to junction OR Hwy 164 at a point north of Jefferson, OR, then over OR Hwy 164 to junction Interstate Hwy 5 at a point south of Jefferson, then over Interstate Hwy 5 to Albany, OR, then over U.S. Hwy 99E to junction U.S. Hwy 99 near Junction City, OR, then over U.S. Hwy 99 to Eugene, OR, then over U.S. Hwy 126 to junction OR Hwy 225, then over OR Hwy 225 to junction U.S. Hwy 99 at or near Goshen, OR, then over U.S. Hwy 99 to Anlauf, OR, then continuing over U.S. Hwy 99 to junction OR Hwy 38, then over OR Hwy 38 to junction U.S. Hwy 99, then over U.S. Hwy 99 to a point north of Oakland, OR, then continuing over U.S. Hwy 99 via Shady Point, OR, to junction U.S. Hwy 199, then over U.S. Hwy 199 to Crescent City, CA, then over U.S. Hwy 101 to San Francisco, and return over the same route, (2) between Henry and Omaha, NE, from Henry over U.S. Hwy 26 to junction U.S. Hwy 385, then over U.S. Hwy 385 to Sidney, NE, then over U.S. Hwy 30 to Fremont, NE, then over U.S. Hwy 275 to Omaha, and return over the same route, (3) between Denver, CO, and Gering, NE, from Denver over Interstate Hwy 25 and U.S. Hwy 87 to junction U.S. Hwys 87 and 85 (approximately eight miles north of Cheyenne), then over U.S. Hwy 85 to Torrington, WY, then over U.S. Hwy 26 to Scottsbluff, NE, then over NE Hwy 29 to Gering, and return over the same route, and (B) *general commodities* (except classes A and B explosives), (4) between St. Joseph and Hopkins, MO, from St. Joseph over U.S. Hwy 71 to junction MO Hwy 148, then over MO Hwy 148 to Hopkins, and return over the same route, (5) between Kansas City and Plattsburg, MO, from Kansas City over U.S. Hwy 169 to junction MO Hwy 116, then over MO Hwy 116 to Plattsburg, and return over the same route, (6) between St. Joseph and Lathrop, MO, from St. Joseph over U.S. Hwy 169 to junction MO Hwy 116, then over MO Hwy 116 to Lathrop, and return over the same route, (7) between Maryville and Burlington Junction, MO, from Maryville over U.S. Hwy 71 to junction U.S. Hwy 136, then over U.S. Hwy 136 to Burlington Junction, and return over the same route, (8) between Maryville, MO, and Shamburgh, IA, over U.S. Hwy 71, (9) between Chicago, IL, and Maryville, MO, from Chicago over U.S. Hwy 66 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Mondota, IL, then over IL Hwy 92 to Moline-Rock Island, IL, then across the MS River to junction U.S. Hwy 61, then over U.S. Hwy 61 to junction IA Hwy 92, then over IA Hwy 92 to Washington, IA, then over IA Hwy 1 to Fairfield, IA, then over U.S. Hwy 34 to Ottumwa, IA, then over U.S. Hwy 63 to Bloomfield, IA, then over IA Hwy 2 to Bedford, IA, then over IA Hwy 148 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Maryville, and return over the same route, (10) between Maryville, MO, and Omaha, NE, from Maryville over U.S. Hwy 71 to Clarinda, IA, then over IA Hwy 2 to Shenandoah, IA, then over U.S. Hwy 59 to Emerson, IA, then over U.S. Hwy 34 to Glenwood, IA, then over U.S. Hwy 275 to Omaha, and return over the same route, (11) between Kansas City, MO, and Topeka, KS, over U.S. Hwy 40, (12) between the Kansas City, KS-Kansas City, MO, commercial zone, as defined by the Commission, and Lawrence, KS, over U.S. Hwy 40, (13) between St. Joseph, MO, and Shambaugh, IA, from St. Joseph over U.S. Hwy 71 to Clearmont, MO, then via Nodaway and Atchison Counties, MO. Hwy C to junction Atchison County, MO, Hwy M, then over Atchison County, MO, Hwy M to the MO-IA state line, then over an unnumbered hwy to junction IA Hwy 333, then over IA Hwy 333 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Shambaugh, and return over the same route (also return over U.S. Hwy 71 via Clearmont, MO to St. Joseph), (14) between Maryville, MO, and Clarinda, IA, over U.S. Hwy 71, (15) between Maryville and Hopkins, MO, from Maryville over U.S. Hwy 71 to junction MO Hwy 27, then over MO Hwy 27 to Hopkins, and return over the same route, (16) between Maryville and Mound City, MO, from Maryville over MO Hwy 46 to junction MO Hwy 113, then over MO Hwy 113 to junction U.S. Hwy 275, then over U.S. Hwy 275 to Mound City, and return over the same route, (17) between junction MO Hwy. 113 and U.S. Hwy 136, and junction MO Hwys 113 and 46, over MO Hwy 113, (18) between junction MO Hwys 46 and 113, and Fairfax, MO, from junction MO Hwys 46 and 113 over MO Hwy 46 to junction U.S. Hwy 275, then over U.S. Hwy 275 to Fairfax, and return over the same route, (19) from and to St. Joseph, MO, from St. Joseph over U.S. Hwy 71 to junction U.S. Hwy 136, then over U.S. Hwy 136 to junction U.S. Hwy 275, then over U.S. Hwy 275 to St. Joseph, (20) between St. Joseph, MO, and Wichita, KS, from St. Joseph over U.S. Hwy 59 to junction KS Hwy 4, then over KS Hwy 4 to junction U.S. Hwy 75, then over U.S. Hwy 75 to Topeka, KS, then over the KS Turnpike to junction U.S. Hwy 50, then over U.S. Hwy 50 to Newton, KS, then over U.S. Hwy 81 to Wichita, and return over the same route, (21) between junction U.S. Hwy 59 and KS Hwy 116, and Salina, KS, from junction U.S. Hwy 59 and KS Hwy 116 to junction KS Hwy 16 at Holton, KS, then over KS Hwy 16 to junction KS Hwy 63, then over KS Hwy 63 to St. Marys, KS, then over U.S. Hwy 24 to Manhattan, KS, then over KS Hwy 18 to junction U.S. Hwy 40, then over U.S. Hwy 40 to Salina, and return over the same route, (22) between Topeka and Junction City, KS, over U.S. Hwy 40, (23) between Topeka and St. Marys, KS, over U.S. Hwy 24, (24) between St. Joseph, MO, and Minneapolis, MN, from St. Joseph over U.S. Hwy 71 to Auburn, IA, then over IA Hwy 175 to junction IA Hwy 4, then over IA Hwy 4 to the IA-MN state line, then over MN Hwy 4 to St. James, MN, then over combined MN Hwys 30 and 60 to Mankato, MN, then over U.S. Hwy 169 to Minneapolis, and return over the same route, and (25) between Omaha and Lincoln, NE, over Interstate Hwy 80, serving all intermediate points and those in IA, IL, NE, KS, and MO as off-route points in connection with routes (1) through (25) above. CONDITION: To the extent this certificate authorizes the transportation of classes A and B

explosives, it will expire 5 years from the date of issuance.

MC 12731 (Sub-3), filed August 3, 1981. Applicant: COACHMAN TOURS, INC., 372 Jericho Turnpike, Floral Park, NY 11002. Representative: Morton L. Price, 1185 Ave. of the Americas, New York, NY 10036, (212) 575–8150. As a *broker* at Floral Park and Farmingdale, NY, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in the U.S.

MC 88380 (Sub-41), filed July 28, 1981. Applicant: REB TRANSPORTATION, INC., 2400 Cold Springs Rd., P.O. Box 4309, Fort Worth, TX 76106. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Fort Worth, TX 76104, (817) 332–4415. Transporting *prefabricated buildings and knocked-down buildings*, between points in Tarrant County, TX, on the one hand, and, on the other, points in the U.S.

MC 118180 (Sub-13), filed July 31, 1981. Applicant: ARCTIC EXPRESS, INC., 12344 E. Northwest Hwy., Dallas, TX 75228. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, (615) 790–2510. Transporting *liquor and wine*, between New Orleans, LA and points in TX.

MC 119741 (Sub-302), filed July 22, 1981. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson, (same address as applicant), (515) 576–6831. Transporting *metal products and building materials*, between the facilities used by Emco Industries at points in CO, GA, IL, IA, KY, MI, MN, NY, OH, TX, UT, and WI, on the one hand, and, on the other, points in the above named states.

MC 125551 (Sub-26), filed August 3, 1981. Applicant: K & W TRUCKING CO, INC., 101 Cooper Ave. North, P.O. Box 1415, St. Cloud, MN 56301. Representative: Andrew R. Clark, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives), between points in AK, on the one hand, and, on the other, points in the U.S. (except ME, NH, VT, CT, RI, MA, FL, GA and SC).

MC 129410 (Sub-27), filed August 3, 1981. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603, (312)–236–9375. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Chicago Sweeteners, Inc., of Elk Grove Village, IL.

MC 135111 (Sub-10), filed July 24, 1981. Applicant: REESE TRUCKING, INC., P.O. Box 99, Dover, OH 44622. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471–1800. Transporting (1) *food and related products*, (2) *farm products*, (3) *tobacco products*, (4) *pulp, paper and related products*, (5) *chemicals and related products*, (6) *rubber and plastic products*, (7) *clay, concrete, glass or stone products*, (8) *metal products*, (9) *machinery*, and (10) *coal and coal products*, between points in KY, OH, GA and MS, on the one hand, and, on the other, points in the U.S.

MC 138000 (Sub-96), filed August 5, 1981. Applicant: ARTHUR H. FULTON, INC., P.O. Box 99, Stephens City, VA 22655. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting *plastic film and sheeting*, between those points in the U.S. in and east of MN, IA, KS, OK, and TX.

MC 138861 (Sub-39), filed July 27, 1981. Applicant: C-LINE, INC., 303 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, DC 20036, (201) 296–2900. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Whittaker Corporation, Providence Chemicals Division, of East Providence, RI.

MC 143501 (Sub-11), filed August 4, 1981. Applicant: R.G.C. CARGO CARRIERS, INC., 16651 S. Vincennes Rd., S. Holland, IL 60473. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20879, (301)–840–8565. Transporting (1) *chemicals and related products;* and (2) *rubber and plastic products*, between points in the U.S., under continuing contract(s) Petrochemical, Division of Internorth, Inc., of Des Plaines, IL.

MC 146140 (Sub-6), filed July 24, 1981. Applicant: MELVIN SALES COMPANY, 901 North Vermillion St., Streator, IL 61364. Representative: Paul J. Maton, Ten South LaSalle St., Suite 1620, Chicago, IL 60603, (312) 332–0905. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of glass containers and closures, between the facilities of Owens-Illinois, Inc., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 150101 (Sub-6), filed July 30, 1981. Applicant: GREENVILLE XPRESS, INC., Rt. 5, Hwy. 14 & I–85, Greer, SC 29651. Representative: Richard R. Bailey (same address as applicant), (803) 877–3233. Transporting *wallboard*, between Greer, SC, on the one hand, and on the other, points in the U.S.

MC 150931 (Sub-1), filed July 27, 1981. Applicant: ARTHUR MOODY d.b.a. SWD TRANSPORTATION, Main St., P.O. Box 731, Southwest Harbor, ME 04679. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207) 773–5651. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Maine Equipment Company, Inc., of Herman, ME, A. L. Stewart and Sons, of Cherryfield, ME, and Lee S. Wilbur and Co., of Manset, ME.

MC 152330 (Sub-2), filed August 3, 1981. Applicant: GLACIER CARRIERS, P.O. Box 490, Columbia Falls, MT 59912. Representative: John T. Wirth, 717–17th St., Ste. 2600, Denver, CO 80202, (303) 892–6700. Transporting *machinery and metal products*, between points in UT, WA, ID, IL, MT, ND, MN, MI, IN, PA, TX and AZ, on the one hand, and, on the other, points in IN, MI, OH, and points in and west of WI, IL, MO, OK, and TX.

MC 152730 (Sub-7), filed July 31, 1981. Applicant: DEPENDABLE TRANSIT, INC., 300 South, P.O. Box 21, Hartford City, IN 47348. Representative: Larry Lee Garrett (same address as applicant), (317) 348–0051. Transporting *pulp, paper and related products*, between points in Grayson County, KY and Saint Claire County, MI, on the one hand, and, on the other, points in the U.S.

MC 153321, filed July 30, 1981. Applicant: LAVCO, INC., 1620 Keyser Ave., Scranton, PA 18508. Representative: Louis J. Carter, 1625 Eye St., N.W., Ste 1009, Washington, DC 20006, (215) 879–8665. Transporting (1) *non-radioactive hazardous waste;* (2) *industrial waste;* and (3) *containers*, between points in Morris County, NJ and Luzerne and Lackawanna Counties, PA, on the one hand, and, on the other, points in PA, OH, NY, NJ, MD and SC.

Note.—To the extent the certificate granted in this proceeding authorizes the transportation of hazardous materials it will expire 5 years from the date of issuance.

MC 154121 (Sub-13), filed August 4, 1981. Applicant: TRAILINER CORP., 5367 West 86th St., Indianapolis, IN 46268. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *general commodities* (except classes A and B explosives), between the facilities used by Borden, Inc., its subsidiaries, divisions and vendors at points in the U.S., on the one

hand, and, on the other, points in the U.S.

MC 155030, filed July 17, 1981. Applicant: BRADLEY TRANSPORTATION, INC., 2209A Lakeside Dr., Bannockburn, IL 60015. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603. (312) 782–8880. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Richmond Transportation Services, Inc., of Bannockburn, IL.

MC 156911 (Republication) filed July 1, 1981, previously noticed in the **Federal Register** issue of July 23, 1981. Applicant: B & D EXPRESS, INC., P.O. Box 143, Federalsburg, MD 21632. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005. (202) 783–3525. Transporting *food and related products*, between Baltimore, MD, Wilmington, DE, and New York, NY, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI and DC.

Note.—The purpose of this republication is to indicate the change in the commodity description and also add NY as a state in the territorial description.

MC 157221, filed July 20, 1981. Applicant: R & J SALVAGE, P.O. Box 125, Rathdrum, ID 83858. Representative: Robert R. Faubion, (same address as applicant), (208) 687–0053. Transporting *building materials and machinery*, between points in ID, on the one hand, and, on the other, points in WA, OR, CA, MT, and UT.

MC 157310, filed July 27, 1981. Applicant: LONNIE'S GRADING AND TRUCKING, INC., Route 45, Box 222, Mundelein, IL 60060. Representative: Edward G. Finnegan, Ltd., 134 North LaSalle St., Suite 1016, Chicago, IL 60602, (312) 782–9500. Transporting *building and construction materials*, and *commodities in bulk*, between points in the U.S., under continuing contract(s) with Builders Ready Mix Co., of Evanston, IL.

MC 157370, filed July 27, 1981. Applicant: UNIVERSAL TRAVEL AGENCY, INC., 1127 Elm St., Norman, OK 73069. Representative: Milton H. Lang (same address as applicant), (405) 329–2380. As a *broker*, at Norman, OK, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in OK, on the one hand, and, on the other, points in the the U.S.

MC 157480, filed August 3, 1981. Applicant: PAT PERRETTI FREIGHT SERVICE, INC., 335 Brown Trail, Hopatcong, NJ 07843. Representative: Arthur J. Piken, 95–25 Queens Blvd., Rego Park, NY 11374, (212) 275–1000. Transporting (1) *chemicals and related products;* and (2) *hazardous waste materials*, between points in the U.S., under continuing contract(s) with (a) Chemical Waste Disposal Corp., of Astoria, NY, (b) Lewis Chem Corp., of Hyde Park, MA, (c) Trimont Charlotte Corp., of Charlotte, NC, (d) Marisol, Inc., of Middlesex, NJ, (e) Walsh Manufacturing Company, Inc., of Carlstadt, NJ, (f) Magruder Color Co., Inc., of Elizabeth, NJ, and (g) Pope Chemical, Inc., of Paterson, NJ.

Note.—To the extent the certificate granted in this proceeding authorizes the transportation of hazardous materials it will expire 5 years from the date of issuance.

MC 157471, filed August 5, 1981. Applicant: A & A ANDERSON TANK SERVICE, LTD., 10471 North 3 Road, Richmond, B.C., Canada V7A1W8. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting *hazardous waste and residuals*, between ports of entry on the United States-Canada boundary line in WA, on the one hand, and, on the other, points in WA, OR and ID. Condition: Issuance of a certificate in this proceeding insofar as it authorizes the transportation of hazardous waste, shall expire 5 years from the date of issuance.

MC 157510, filed August 5, 1981. Applicant: TOURING AROUND, INC., 1517 C Stowell Center Plaza, Santa Maria, CA 93454. Representative: Peter J. Lilla, P.O. Box 1819, Santa Maria, CA 93456, (805) 928–4414. As a *broker*, at Santa Maria, CA, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, beginning and ending at points in San Luis Obispo and Santa Barbara Counties, CA, and extending to points in the U.S., including AK and HI.

Volume No. OPY–2–148

Decided: August 7, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

FF 562, filed July 27, 1981. Applicant: GALAXY FORWARDERS, INC., 703 Market St., Suite 470–A, San Francisco, CA 94103. Representative: A. W. Johnson (same address as applicant), (415) 957–1047. As a *Freight Forwarder* in connection with the transportation of *used household goods, unaccompanied baggage and used* automobiles, between points in the U.S.

MC 39073 (Sub-12), filed July 27, 1981. Applicant: BUDRECK TRUCK LINES, INC., 9330 South Constance Ave., Chicago, IL 60617. Representative: Richard A. Kerwin, 180 North La Salle St., Chicago, IL 60601, (312) 332–5106. Transporting *general commodities* (except classes A and B explosives), between points in IL, IN, KY, MI, OH, and MI.

MC 52793 (Sub-78), filed July 29, 1981. Applicant: BEKINS VAN LINES CO., 333 S. Center St., Hillside, IL 60162. Representative: David A. Gallager (same address as applicant), 312–547–2184. Transporting *household goods*, between points in the U.S., under continuing contract(s) with American Hoechst Corporation, of Somerville, NJ.

MC 52793 (Sub-79), filed July 28, 1981. Applicant: BEKINS VAN LINES CO., 333 S. Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Racal Milgo, of Miami, FL.

MC 73533 (Sub-20), filed July 24, 1981. Applicant: KEY WAY TRANSPORT., INC., 820 S. Oldham Rd., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20879, (301) 840–8565. Transporting *general commodities* (except classes A and B explosives), between Baltimore, MD, on the one hand, and , on the other, points in RI, MA, ME, NH, VT, MI, IL, IN, OH, NY, NC, SC, GA, AR, FL, AL, TN, MS, LA and KY.

MC 136393 (Sub-10), filed May 5, 1981, published in the **Federal Register** issue of June 8, 1981, and republished, as corrected, this issue. Applicant: NY, NJ, CONN, FREIGHT & MESSENGER CORP., 351 West 38th St., New York, NY 10018. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212–239–4610. Transporting *such commodities* as are dealt in by retail department stores, between Los Angeles, Ontario, San Diego, and San Francisco, CA, on the one hand, and, on the other, Chicago, IL, New Orleans, LA, Baltimore, MD, Boston, MA, Detroit, MI, Kansas City and St. Louis, MO, Sparks, NV, Cincinnati, Cleveland, Columbus, and Dayton, OH, Portland, OR, Fort Worth, Dallas, and Houston, TX, Seattle, WA, and Milwaukee, WI, and points in AL, FL, GA, MS, NC, SC, TN, and DC. The purpose of this republication is to correct the territorial description.

MC 141932 (Sub-47), filed July 30, 1981. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant), (617) 871–2550. Transporting *general commodities*,

between points in the U.S., under continuing contract(s) with Borden, Inc., of Columbus, OH. Condition: To the extent any permit issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issuance.

MC 144572 (Sub-58), filed July 31, 1981. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box "G", Greeley, CO 80632. Representative: John T. Wirth, 717 17th St., Ste. 2600, Denver, CO 80202, (303) 892–6700. Transporting *Food and related products*, between points in the U.S., under continuing contract(s) with Lamb-Weston, Inc. of Portland, OR.

MC 145083 (Sub-1), filed July 28, 1981. Applicant: H & B EQUIPMENT COMPANY, INC., P.O. Box 404, Bakersfield, CA 93302. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306 (805) 872–1106. Transporting *machinery, Mercer Commodities*, and *those commodities which because of their size or weight require the use of special handling or equipment*, between points in CA, on the one hand, and, on the other, points in AZ, CO, ID, KS, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY.

MC 147072 (Sub-3), filed July 31, 1981. Applicant: D & M TRUCKING, INC., 718 Colonial Circle, Jackson, MS 39211. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205, (601) 355–3543. Transporting *clay, concrete, glass or stone products*, and *metal products*, between points in AL, AR, FL, LA, MS, TN, and TX.

MC 147553 (Sub-15), filed July 29, 1981. Applicant: DENNIS MOSS AND GARY MOSS d.b.a. MOTOR WEST, P.O. Box 1405, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Albertson's, Inc., of Boise, ID.

MC 150122, filed July 29, 1981. Applicant: DYSART SERVICE, INC., MRC 156, Bangor, ME 04401. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW, Washington, DC 20005, (202) 296–3555. Transporting *petroleum and petroleum products*, between Boston, MA, on the one hand, and, on the other, points in ME, NH, and VT.

MC 151193, filed July 27, 1981. Applicant: PAULS TRUCKING CORPORATION, 3 Commerce Drive, Cranford, NJ 07016. Representative: Michael A. Beam (same as applicant), (201) 499–3869. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under a continuing contract(s) with Lash-Tamaron, Division of Toys "R" Us, Inc., of Rochelle Park, NJ.

MC 155873, filed July 29, 1981. Applicant: RICHARD LEJEUNE d.b.a. RICHARD LEJEUNE TRUCKING, Rte. 2, Box 164, Halfway, MO 65663. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804, 417–883–7311. Transporting (1) *machinery* and (2) *such commodities* as are dealt in or used by manufacturers and distributors of artificial flowers, between points in the U.S., under continuing contract(s) with (a) Mott Corporation, of La Grange, IL, and (b) Teter's Floral Products Company, of Bolivar, MO.

MC 156143, filed July 27, 1981. Applicant: RAINBOW COACH LINES, a division of CARE CABS, INC., 5538 West National Avenue, West Allis, WI 53214. Representative: Richard A. Kerwin, 180 North LaSalle St., Chicago, IL 60601, (312) 332–5106. Transporting *passengers and their baggage*, in charter and special operations, between points in Milwaukee, Waukesha and Ozaukee Counties, WI, on the one hand, and, on the other, points in the U.S.

MC 157353, filed July 27, 1981. Applicant: HENRY S. POWER d.b.a. POWER TRUCK LINE, 805 South Kensington, LaGrange, IL 60525. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782–8880. Transporting *such commodities* as are used, dealt in or exhibited by trade show exhibitors between Chicago, IL, on the one hand, and, on the other, points in IN, WI, MI, MO, IA, NE, KS, MN, OH and PA.

MC 157452, filed July 31, 1981. Applicant: PRECISION TRANSPORT CO., INC., Triple A Shipyard, Hunters Point, San Francisco, CA 94124. Representative: John Paul Fischer, 256 Montgomery St., 5th Floor, San Francisco, CA 94104, 415–421–6743. Transporting *general commodities* (except classes A and B explosives), between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

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Decided: August 10, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 9325 (Sub-82), filed July 30, 1981. Applicant: K-LINES, INC., P.O. Box 1549, Lake Oswego, OR 97034. Representative: Michael D. Crew, 1618 S.W. First Avenue, Portland, OR 97201, (503) 221–1529. Transporting *cement*, between points in Bannock County, ID, on the one hand, and, on the other, points in Juab County, UT.

MC 104675 (Sub-44), filed July 30, 1981. Applicant: FRONTIER DELIVERY, INC., 4238 Ridge Lea Rd., Amherst, NY 14226. Representative: Ronald W. Malin, Bankers Trust Bldg., 4th Fl., Jamestown, NY 14701, (716) 664–5210. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with Ashland Chemical Company, Division of Ashland Oil, Inc. of Dublin, OH.

MC 120924 (Sub-13), filed July 30, 1981. Applicant: B & W CARTAGE CO., INC., 2932 W. 79th St., Chicago, IL 60603. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives), (a) between points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN and TX, (b) between points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN and TX, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KS, KY, MA, MD, ME, MI, MO, NH, NJ, NY, OH, PA, RI, VA, VT, WI, WV and DC, and (c) between points in IL, IN, IA, KS, KY, MI, MO, OH and WI, on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV and DC.

MC 123914 (Sub-4), filed July 30, 1981. Applicant: W. C. KLINE, INC., 3200 South Tenth Ave., Altoona, PA 16603. Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *ores and minerals*, between the facilities of Sproul Lime & Stone Company, at points in Blair County, PA, on the one hand, and, on the other, points in Portage, Geauga, Lake, Cuyahoga, and Trumbull Counties, OH.

MC 127435 (Sub-1), filed July 31, 1981. Applicant: DAVID R. BUMGARDNER, d.b.a. BUMGARDNER'S DELIVERY SERVICE, Rural Route #1, Dawson, IL 62520. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703, (217) 528–8476. Transporting *such commodities* as are dealt in or used by drug stores, between points in the U.S., under continuing contract(s) with Fox Meyer Drug Company, of St. Louis, MO.

MC 133494 (Sub-21), filed July 30, 1981. Applicant: W. W. BELCHER TRUCKING, INC., Route 1, Box 757–M, Sanger, TX 76266. Representative: Bradley M. Belcher (same address as applicant), (817) 458–7492. Transporting *general commodities* (except classes A and B explosives), between the facilities of Ralston Purina Company, located at

points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 136994 (Sub-2), filed July 30, 1981. Applicant: EDWIN BOOTH, JR., Box 275, Eagles Mere, PA 17731. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *coal*, between points in Sullivan County, PA, on the one hand, and, on the other, points in ME, NH, MA, CT, RI, OH, NJ, MD, DE and VT.

MC 143065 (Sub-11), filed July 30, 1981. Applicant: THE DANIEL COMPANY OF SPRINGFIELD, 3725 W. Division, Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804, (417) 883–7311. Transporting (1) *pulp, paper and related products*, (2) *rubber and plastic products*, (3) *non-wovens and non-woven articles*, and (4) *metal products*, between the facilities of Fort Howard Paper Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 143565 (Sub-4), filed July 28, 1981. Applicant: HIGHWAY TRANSPORTATION COMPANY, a corporation, Route 2, Freedom Park, Hermon, ME 04401. Representative: Durward L. Humphrey (same address as applicant), (207) 848–3314. Transporting *alcoholic beverages*, between points in the U.S., under continuing contract(s) with the Maine Bureau of Alcoholic Beverages, of Augusta, ME.

MC 144115 (Sub-25), filed July 30, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 6670 11th Ave., S.W., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095, (414) 677–2586. Transporting (1) *rubber and plastic products*, and (2) *chemicals and related products*, between the facilities of Bandag Incorporated, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 144115 (Sub-26), filed July 29, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 6670 11th Ave., S.W., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095, (414) 677–2586. Transporting *metal products and machinery*, between the facilities of The Stanley Works at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 144115 (Sub-27), filed July 31, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 6670 11th Ave., S.W., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095, (414) 677–2586. Transporting *food and related products*, between the facilities of International Multifoods Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 145695 (Sub-9), filed July 30, 1981. Applicant: MAZCO SYSTEMS, INC., 140 Grand Street, Carlstadt, NJ 07072. Representative: Roy A. Jacobs, 550 Mamaroneck Avenue, Harrison, NY 10528, (914) 835–8411. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under a continuing contract(s) with Polychrome Corporation of Yonkers, NY.

MC 145964 (Sub-5), filed July 28, 1981. Applicant: MELBA S. POWELL, d.b.a. C.B.M. TRANSPORT, 922 South 2300 East, Salt Lake City, UT 84108. Representative: Blaine Powell, 2759 Benar Circle, Salt Lake City, UT 84109, (801) 484–5316. Transporting *building materials*, and *commodities* which because of size or weight require the use of special equipment, between points in NM, CO, WY, MT, ID, UT, AZ, NV, CA, OR, and WA.

MC 146964 (Sub-17), filed July 31, 1981. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Michael Valencik (same address as applicant), (717) 845–7030. Transporting *general commodities* (except classes A and B explosives), between the facilities of Westinghouse Corporate Transportation, Division of Westinghouse Electric Corporation, at points in the U.S., on the one hand, and, on the other, points in PA and NJ.

MC 148154 (Sub-1), filed July 28, 1981. Applicant: DELMAS W. HEINKE, d.b.a. CRISIS TRANSPORTATION COMPANY, 11510 Corkwood, Houston, TX 77089. Representative: Delmas W. Heinke (same address as applicant), (713) 481–2254. Transporting (1) *food and related products*, between the facilities of Anderson Clayton Foods, at points in Fresno and Merced Counties, CA, Green, Waupaca, and Dodge Counties, WI, Morgan County, IL, Gibson County, TN, and Grayson County, TX, on the one hand, and, on the other, points in the U.S., (2) *ashes, blacks, fines, dust, pellets, powder, and sweepings*, between Houston, TX, points in Chicot County, AR, and Washington County, MS, on the one hand, and, on the other, points in the U.S., (3) *general commodities* (except classes A and B explosives), between points in TX, LA, AR, OK, NM, AL, and MS, and (4) *chemicals and related products*, between points in TX and LA, on the one hand, and, on the other, points in the U.S.

MC 150954 (Sub-37), filed July 28, 1981. Applicant: TRAVIS TRANSPORTATION, INC., 6013 Rittiman Plaza, P.O. Box 39430, San Antonio, TX 78218. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, D.C. 20005, (202) 783–7900. Transporting (1) *chemicals and related products*, (2) *plastic products*, and (3) *metal products*, between points in the U.S., under continuing contract(s) with Dow Chemical U.S.A., of Freeport, TX. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 3, Room 2158.

MC 151395 (Sub-9), filed July 30, 1981. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd. P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Pkwy., Atlanta, GA 30345, (404) 321–1765. Transporting *such commodities* as are dealt in or used by manufacturers, brewers or distributors of malt beverages, between the facilities of Jos. Schlitz Brewing Co., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 153134 (Sub-3), filed July 31, 1981. Applicant: HI COUNTRY CARRIERS, INC., 4061 S. Broadway, Englewood, CO 80110. Representative: Jack B. Wolfe, 1600 Sherman St., #665, Denver, CO 80203, (303) 839–5856. Transporting (1) *machinery*, and (2) *those commodities which because of size or weight require the use of special handling or equipment*, between points in the U.S., under continuing contract(s) with Seaward Construction Co., Inc., of Portsmouth, NH.

MC 153584, filed July 29, 1981. Applicant: LARRY A. LANCKRIET, d.b.a. LARRY A. LANCKRIET TRUCKING, 308 South Cedar, Yuma, CO 80759. Representative: Larry A. Lanckriet (same address as applicant) (303) 848–5161. Transporting *dry potash compounds, boron compounds, and fertilizers*, between points in the U.S., under continuing contracts(s) with Yuma Farmers M & M Coop, of Yuma, CO.

MC 153585, filed July 29, 1981. Applicant: DONALD WALDMANN, d.b.a. D & W EQUIPMENT, 819 Holly, Sterling, CO 80751. Representative: Donald W. Waldmann (same address as applicant) (303) 522–5710. Transporting *building materials* and *asphalt shingles*, between points in the U.S., under continuing contract(s) with (1) Qulaity Lumber & Supply, Inc., of Sterling, CO,

and (2) General Building Materials, of Englewood, CO.

MC 154884, filed July 30, 1981. Applicant: ABBOTT, INC., 858 William Drive, Brielle, NJ 08730. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Transporting *petroleum products*, between points in the U.S. under continuing contract(s) with Bel Ray Oil Company, Inc., of Farmingdale, NJ.

MC 155925 (Sub-1), filed July 31, 1981. Applicant: A.A. LAW MOVERS, INC. T/A. PETER FERRARO MOVING & STORAGE CO., 186 So. Prospect Ave., Bergenfield, NJ 07621. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland, NJ 08904, (201) 572–5551. Transporting *household goods*, between points in NJ, on the one hand, and, on the other, points in CT, DE, MA, MD, NY, NC, PA, SC, VA and WV.

MC 156004, filed July 30, 1981. Applicant: HARLAN ERDAHL TRUCKING, INC., 1901 Erdahl Road, Stoughton, WI 53589. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719 (608) 273–1003. Transporting *transportation equipment*, between points in the U.S., under continuing contract(s) with Stoughton Trailers, Inc., of Stoughton, WI.

MC 157365, filed July 27, 1981. Applicant: BUD BROOKS TRUCKING, INC., Box 1087, Woodward, OK 73802. Representative: C. L. Phillips, Room 248-Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106 (405) 528–3884. Transporting *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manfacture, processing, storage, transmission, and distribution of natural gas and petroleum and petroleum products, between points in OK, on the one hand, and, on the other, points in KS, LA and TX.

Volume No. OPY–3–141

Decided: August 11, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

MC 99625 (Sub-8), filed July 23, 1981. Applicant: LUCIEN BISSON, INC., RFD Box 262, New Meadows Rd., West Bath, ME 04530. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210 (703) 525–4050. Transporting *general commodities* (except classes A and B explosives), between points in ME.

MC 101075 (Sub-124), filed August 3, 1981. Applicant: TRANSPORT, INC., P.O. Box 396, Moorhead, MN 56560. Representative: Robert S. Lee, 1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402 (612) 333–1341. Transporting *commodities in bulk*, between points in IL, IN, IA, KS, the Upper Peninsula of MI, MN, MO, MT, NE, ND, SD, WI, and Wyoming.

MC 124174 (Sub-183), filed July 30, 1981. Applicant: MOMSEN TRUCKING CO., a corporation, 13811 L Street, Omaha, NE 68137. Representative: Raymond A. Jensen (same address as applicant) (402) 895–3505. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 3, Room 2158.

MC 148105 (Sub-1), filed August 3, 1981. Applicant: OVERLAND EXPRESS COMPANY, INC., P.O. Box 12322, Houston, TX 77017. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459 (713) 437–1768. Transporting *plastic and rubber products*, between points in Harris, Jefferson, Montgomery, Walker, Brazoria, Matagorda, Fort Bend and Orange Counties, TX, on the one hand, and, on the other, Ports of Houston, Galveston, Port Arthur, Beaumont and Orange.

MC 149105 (Sub-5), filed July 30, 1981. Applicant: BAYOU STATE TRUCKING, INC., 639 So. Rendon St., Suite 303, New Orleans, LA 70119. Representative: Brian S. Stern, North Springfield Professional Centre II, 5411–D Backlick Rd., Springfield, VA 22151 (703) 941–8200. Transporting *such commodities* as are dealt in or used by manufacturers, fabricators, distributors, and dealers of (1) pipe, valves, fittings, pipe casings, and tubing and related products, (2) pumps, machinery, parts and related products, (3) metal and metal products, and (4) materials, equipment and supplies used in the petroleum, natural gas, petrochemical and chemical industries, between the facilities of Onyx Energy Corporation and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 149205 (Sub-2), filed July 27, 1981. Applicant: BILL D. HAVENS, d.b.a. HAVENS TRUCKING, 1609 East 27th, Farmington, NM 87401. Representative: Jack Smith, P.O. Box 1669, Albuquerque, NM 87103 (505) 842–9096. Transporting *coal and sand*, between points in NM, CO, TX and AZ.

MC 152785, filed August 3, 1981. Applicant: WILLIAM J. CHAMBERS AND WILLIAM H. CHAMBERS, a partnership, d.b.a. WESTWAY TRANSPORTATION CO., 153 Valencia Dr., Camarillo, CA 93010. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306 (805) 872–1106. Transporting *food and related products*, between points in Los Angeles and Orange Counties, CA, on the one hand, and, on the other, points in OR and WA.

MC 156344, filed August 3, 1981. Applicant: CLYDE MILLS, d.b.a. MILLS DISTRIBUTING, Box 265, Hurley, SD 57036. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101 (605) 335–1777. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with Cargill, Inc., of Minneapolis, MN.

MC 157444, filed July 30, 1981. Applicant: UNITED LEASING SERVICES, 17225 Ellis Ct., South Holland, IL 60473. Representative: Joel H. Steiner, 39 So. LaSalle St., Suite 600, Chicago, IL 60603 (312) 236–9375. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Century Steel Corporation of Chicago, IL.

MC 157464, filed August 3, 1981. Applicant: ELLSWORTH WILLIAM HIGBY, d.b.a. LOOKOUT BODY SHOP, 31 Pearl Street, Allegheny, PA 16743. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219 (412) 471–1800. Transporting *mobile homes*, between points in PA and NY.

MC 157465, filed August 3, 1981. Applicant: WEST SIDE MOVERS, INC., 6675 Eastland Rd., Cleveland, OH 44130. Representative: Lewis S. Witherspoon, 2455 No. Star Rd., Columbus, OH 43221 (614) 486–0448. Transporting *household goods*, between points in Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties, OH, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, MA and DC.

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Decided: August 10, 1981.

By the Commission, Review Board Number 2, members Carleton, Fisher, and Williams.

MC59666, (Sub-18), filed July 27, 1981. Applicant: TRAFIK SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: Robert A. Mega (Same address as applicant) (401) 724–1200.

Transporting *instruments and photographic goods*, between points in the U.S., under continuing contract(s) with James River Graphics, Inc., of South Hadley, MA.

MC 60186, (Sub-73), filed July 27, 1981. Applicant: NELSON FREIGHTWAYS, INC., 47 East St., P.O. Box 1358, Rockville, CT 06066. Representative: Richard J. Miller (Same address as applicant) (203) 871–2050. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. restricted to traffic having a prior or a subsequent movement by rail.

MC 61396, (Sub-391), filed July 21, 1981. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68103. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68103 (402) 348–0832. Transporting *general commodities* (except classes A and B explosives), between the facilities used by ConAgra, Inc., and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 61396 (Sub-392), filed July 30, 1981. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68103. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68103 (402) 348–0832. Transporting *vegetable oils and animal fats*, between the facilities of Grindsted Products, Inc., Division of Grindsted Products A/S, Denmark, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 66746 (Sub-28), filed July 29, 1981. Applicant: SHIPPERS EXPRESS, INC., P.O. Box 8308, Jackson, MS 39204. Representative: Harold D. Miller, Jr., 17th Fl., Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *general commodities* (except classes A and B explosives), between points in MS, on the one hand, and, on the other, Atlanta, GA, Beaumont, Dallas, Fort Worth, and Houston, TX, Birmingham, Mobile, and Montgomery, AL, Chattanooga and Nashville, TN, Jacksonville, Orlando, and Tampa, FL, Little Rock, AR, and Monroe and Shreveport, LA.

MC 67646 (Sub-103), filed July 27, 1981. Applicant: HALL'S MOTOR TRANSIT COMPANY, a Corporation, 6060 Carlisle Pike, Mechanicsburg, PA 17055. Representative: Edward W. Kelliher (same address as applicant) (717) 790–8543. Transporting *food and related products*, (1) between points in Fulton County, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, and (2) between points in Defiance, Henry, Miami and Montgomery Counties, OH, Wilson County, NC, and Richland, County, SC, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, IA, KY, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC.

Note.—Applicant intends to tack this authority with its present operations.

MC 99656 (Sub-7), filed July 31, 1981. Applicant: IDDINGS TRUCKING, INC., State Rt. 60, Box 388, Lowell, OH 45744. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting (1) *commodities in bulk*, (2) *sand, clay, glass or stone products*, (3) *metal products*, (4) *ores and minerals*, (5) *building materials*, and (6) *chemicals and related products*, between points in AL, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, SC, OH, PA, RI, TN, VT, VA, WV, and WI.

MC 111956 (Sub-63), filed July 30, 1981. Applicant: SUWAK TRUCKING COMPANY, 1105 Fayette St., Washington, PA 15301. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471–1800. Transporting *general commodities* (except classes A and B explosives), serving DC, as an off-route point in connection with carrier's otherwise authorized regular-route operations.

MC 118806 (Sub-76), filed July 30, 1981. Applicant: ARNOLD BROS. TRANSPORT, LTD., Suite 200, 851 Lagimodiere Blvd., Winnipeg, Manitoba, Canada R2J 3k4. Representative: Bernard J. Kompare, 10 South LaSalle St., Suite 1600, Chicago, IL 60603, (312) 263–1600. In foreign commerce only, transporting *general commodities* (except classes A and B explosives), between the ports of entry on the international boundary line between the U.S. and Canada in and west of MN, on the one hand, and, on the other, points in the U.S.

MC 123476 (Sub-72), filed July 32, 1981. Applicant: CURTIS TRANSPORT, INC., P.O. Box 388, Arnold, MO 63010. Representative: David G. Dimit, (same address as applicant) (314) 464–1300. Transporting *plastic and plastic products*, between points in Greenup County, KY, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 133466 (Sub-2), filed July 31, 1981. Applicant: FORT CALHOUN EXPRESS, INC., P.O. Box 12127, Ft. Calhoun, NE 68023. Representative: Bardford E. Kistler, 500 The Atrium, 1200 N St., P.O. Box 82028 Lincoln, NE 68501, (402) 475–6761. Transporting *food and related products*, between the facilities utilized by Banquet Foods Corporation, at Kansas City, and points in Carroll, Saline, and Macon Counties, MO, on the one hand, and, on the other, points in IL, IA, and NE.

MC 135046 (Sub-22), filed July 28, 1981. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 So. DuPont Hwy., Smyrna, DE 19977. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) Swift & Company, of Chicago, IL, (2) Dayco Corporation, of Dayton, OH, and (3) International Playtex, Inc., of Dover, DE.

MC 139006 (Sub-31), filed July 30, 1981. Applicant: RAPIER SMITH, RURAL RT. 5, Loretto Rd., Bardstown, KY 40004. Representative: William P. Whitney, Jr. (same address as applicant) (502) 348–5159. Transporting *plastic articles*, between the facilities used by Mobil Chemical Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 139106 (Sub-1), filed July 27, 1981. Applicant: A.B.A TRUCKING CORP., 14 Harmich Rd., S. Plainfield, NJ 07080. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *iron and steel articles*, between points in the U.S., under continuing contract(s) with Prior Coated Metals, of Allentown, PA.

MC 141616 (Sub-6), filed July 24, 1981. Applicant: OHIO OIL GATHERING CORPORATION, 201 King of Prussia Rd., Radnor, PA 19807. Representative: Thomas N. Willoss, 1000 Sixteenth St. NW., Suite 502, Solar Building, Wash. D.C. 20036, (202) 783–8131. Transporting *petroleum and petroleum products* between points in the U.S. under continuing contract(s) with Ohio Oil Gathering Corporation II, of Radnor, PA.

MC 142336 (Sub-4), filed July 28, 1981. Applicant: D. TERRY CHAMNESS, d./b./a. TERRY'S ROAD, TRUCK & WRECKER SERVICE, 4331 So. 12th St., Kalamazoo, MI 49009. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 489–5724. Transporting *machinery*, between points in Allegan, Barry, Eaton, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, St. Joseph, Branch, and Hillsdale Counties, MI, on the one hand, and, on the other, points in the U.S.

MC 143346 (Sub-7), filed July 23, 1981. Applicant: HOLLINGSWORTH GRAIN & TRUCKING, 204 Bolivar, Sanger, TX 76266. Representative: Billy Jack Hollingsworth (same address as applicant) (817) 458–3255. Transporting *general commodities* (except classes A and B explosives), between the facilities

used by Ralston Purina Company and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 144606 (Sub-22), filed July 24, 1981. Applicant: DUNCAN & SON LINES, INC., 714 E. Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 No. 12th St., Phoenix, AZ 85014, (602) 241–0777. Transporting *textile mill products,* between points in AZ, CA, CO, OR, UT, WA, and NV.

MC 144906 (Sub-5), filed July 28, 1981. Applicant: NORTH OPERATING COMPANY, a Corporation, 39 Little Brook Rd., Springfield, NJ 07081. Representative: Roy A. Jacobs, 550 Mamaroneck Ave., Harrison, NY 10582, (914) 835–4411. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Invenex Laboratories, of Grand Island, NY, and Drager Industries, Inc., of New York, NY.

MC 145436 (Sub-2), filed July 28, 1981. Applicant: RONALD A. KOTTKE, d.b.a. KOTTKE TRUCKING, 520 Second St., S.W., Ortonville, MN 56278. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440 (612) 542–1121. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Big Stone Cheese Co., Division of Frigo Cheese Co., of Big Stone City, SD.

MC 146116 (Sub-4), filed July 31, 1981. Applicant: LOCUST HARDWARE CO., INC., P.O. Box 265, Hwy 27, Locust, NC 28097. Representative: Webster S. Medlin, 43 Union St., So., Concord, NC 28025 (704) 786–8173. Transporting *brick,* between the facilities of Boren Clay Products Company, at or near Gaffney and Blacksburg, SC, on the one hand, and, on the other, points in NC and SC.

MC 146336 (Sub-23), filed July 24, 1981. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC., 1606–109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245 (214) 358–3341. Transporting (1) *chemicals and related products,* and (2) *clay, concrete, glass or stone products,* between points in the U.S., under continuing contract(s) with L & M—Murco Mfg., Inc., of Dallas, TX. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 5337.

MC 146336 (Sub-24), filed July 30, 1981. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC., 1606–109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245 (214) 358–3341. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Xerox Corporation, of Rochester, NY. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 5331.

MC 147326 (Sub-3), filed July 28, 1981. Applicant: NEWPORT AIR FREIGHT, INC., Airport Rd., Newport, VT 05855. Representative: Duane C. Wright (same address as applicant) (802) 334–2613. Transporting *general commodities* (except classes A and B explosives), between points in VT, NH, ME, MA, and CT.

MC 147676 (Sub-10), filed July 29, 1981. Applicant: KEATON TRUCK LINES, INC., 1000 So. Lelia St., P. O. Box 1187, Texarkana, TX 75504. Representative: Patsy R. Washington (same address as applicant) (214) 793–3991. Transporting *food and related products,* between points in the U.S.

MC 147906 (Sub-6), filed July 23, 1981. Applicant: KOHN TRANSPORT, INC., 4850 Southway S.W., Canton, OH 44706. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *paper and related products,* between points in Stark County, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 149026 (Sub-32), filed July 27, 1981. Applicant: TRANS-STATES LINES, INC., P. O. Box 6645, Fort Smith, AR 72906. Representative: Larry C. Price, (same address as applicant) (501) 785–6177. Transporting *furniture,* between Dallar, TX, on the one hand, and, on the other, points in the U.S.

MC 150066 (Sub-3), filed July 27, 1981. Applicant: MULTI-STATES TRANSPORT, INC., P. O. Box M244, Gary, IN 46401. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., N.W., Washington, D.C. 20005 (202) 783–7900. Transporting (1) *transportation equipment,* (2) *refractories and refractory products,* and (3) *metal and metal products,* between points in the U.S., under continuing contract(s) with Harbison-Walker refractories, Division of Dresser Industries, Inc., of Pittsburgh, PA; AMI Industries, Inc., of Gary, IN; U.S. Refractories Division, General Refractories Company, of Bala Cynwyd, Pa; Roll Coater, Inc., Division of Arvin Industries Inc., of Greenfield, IN; Combustion Engineering, Inc., of Valley Forge, PA; Transtor Corporation, of Hammond, Inc.; and Nissho Iwai, of Chicago, IL.

MC 151036 (Sub-4), filed July 28, 1981. Applicant: DECATUR TRANSIT, INC., 161 First Ave. NE., Decatur, AL 35601 Representative: Erick G. Hancock (same address as applicant), (205) 353–9601. Transporting *asphalt and paving materials,* between Tuscaloosa and Cordova, AL, on the one hand, and, on the other, points in Bledsoe, Coffee, Franklin, Marion, Moore, Rhea, Sequatchie, and Van Buren Counties, TN.

MC 152686, filed July 28, 1981. Applicant: ARGAS PERSICUS TRAVEL, LTD., d.b.a. TOP DECK AMERICA, 359 N. End Rd., London, England SW6. Representative: Paul Hauser, 50 & 51 Russel Square, London, England, WC1 (01) 637–0651. Transporting *passengers and their baggage* in charter and special operations, between points beginning and ending at New York, NY, Los Angeles, CA and Miami, FL and extending to points in the U.S.

MC 154646 (Sub-8), filed July 27, 1981. Applicant: A & O ENTERPRISES, INC., d.b.a. GREATWEST TRANSPORTATION SYSTEMS, 2022 Kent Ave., Grand Island, NE 68801. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *metal products,* between points in Stanton County, NE, on the one hand, and, on the other, points in WA, OR, CA, NV, AZ, NM, ID, MT, WY, CO, TX, and UT.

MC 155446, filed July 27, 1981. Applicant: RONALD CORRELL, SR., d.b.a. CORRELL TRANSPORTATION, 16020 Barry Knoll Way, Granger, IN 46530. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 S. Second St., Elkhart, IN 46516, (219) 293–3597. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Johnson Iron Industries, Inc. of Charlotte, MI, and Universal Forest Products, Inc., of Grand Rapids, MI.

MC 157216, filed July 27, 1981. Applicant: HUHA TRUCKING, 2016 Low Rd., El Centro, CA 92243. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212. (213) 277–2323. Transporting *materials and supplies* used in the manufacture of bakery products, between points in the U.S., under continuing contract(s) with Soojian, Inc. d.b.a. AK-Mak Bakers, of Sanger, CA.

MC 157276, filed July 20, 1981. Applicant: METROPOLITAN CONTAINER, INC., 271 Culver Ave., Jersey City, NJ 07305. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives), between points in NJ, NY, CT, MA, PA, and OH.

MC 157337, filed July 27, 1981. Applicant: ROBERT COOPER AND ROBERT STEWART, d.b.a. BOB'S TRUCKING, Route 1, Box 33H, Washington, OK 73093. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036. (405) 262–1322. Transporting *Mercer commodities*, between points in OK, on the one hand, and, on the other, points in AR, CO, KS, LA, NM, TX, UT, and WY.

MC 157416, filed July 30, 1981. Applicant: BURGESS TRANSPORTATION COMPANY, Rt. 2, Box 336, Ashford, AL 36312. Representative: Rodney Steve Burgess (same address as applicant), (205) 899–6020. Transporting (1) *clay and clay products*, between points in GA, on the one hand, and, on the other, points in IL, MN, OK, LA, WI, MO, KS, IA, and NE, (2) *meats and meat products*, between points in IL, WI, MO, KS, IA, NE, MN, GA, FL, AL, and SC.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-24090 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 C.F.R. 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter. By the Commission, Review Board Number 3, Krock, Joyce and Dowell.

MC–FC–79094. By decision of April 9, 1981 issued under 49 U.S.C. 10926, and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Gary L. Karras D/B/A Karras Trucking of Certificate No. MC–5019 issued July 18, 1962, Arthur B. Bjornson D/B/A Bjornson Truck Service and subsequently acquired by Mark E. Larson D/B/A Larson's Trucking in No. MC–FC–78481 authorizing the transportation of *Malt beverages*, from Duluth, MN, over U.S. Highway 61 to junction U.S. Highway 10, then over U.S. Highway 10 to Ellsworth, WI, serving no intermediate points; *empty containers*, from Ellsworth, WI, to Duluth, MN, serving no intermediate points, from Ellsworth over the above specified route to Duluth; *agricultural commodities and feed*, between points in the villages of Elmwood, Spring Valley, and Ellsworth, WI, on the one hand, and, on the other, Minneapolis, St. Paul, south St. Paul and Red Wing, MN; *Livestock, agricultural commodities, farm machinery, lumber, logs, firewood, feed, seed, and groceries*, between points in the towns of El Paso, Gilman, Rock Elm, Ellsworth, Martell, and Spring Lake, Pierce County, WI, not including the villages specified above, on the one hand, and, on the other, Minneapolis, St. Paul, South St. Paul, and Red Wing, MN; and *Livestock*, from South St. Paul, MN, to Whitehall, WI. Applicant's representative is: Stanley C. Olsen, Jr., 5200 Wilson Rd., Suite 307, Minneapolis, MN. 55424.

MC–FC–79178. By decision of August 13, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Raymond Dufresue, Jr. doing business as Beverage Trucking, Inc., of South Windsor, CT, of Permit No. MC–113498 (Sub-Nos. 2 and 3) issued and January 9, 1970, to Edward F. Schulty, doing business as E. F. Schultry Transportation Company, of East Hartford, CT, authorizing the transportation of (Sub-No. 2) (a) *Malt beverage*, in barrett, cases, or cartons, from Newark, NJ, to Hartford, CT, (b) *Empty containers* for malt beverages, from Hartford, CT, to Newark, NJ. (Sub. No. 3) *Malt beverages*, from Merrimack, NH, to East Hartford, CT, under continuing contract(s) with Hartford Distributors, Inc. Applicants' representative: Patrick A. Doyle, 40 Sky Ridge Lane, Springfield, MA 01128, 413–783–0442.

MC–FC–79214. By decision of August 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to John A. Birney d/b/a John Birney Transport, of Certificate No. MC–136309 issued April 22, 1981 to James Frederick Lettman d/b/a Lettman Transport, Kirkland, WA, authorizing the transportation over irregular routes of *wooden shakes, shingles and ridge trim*, from Skagit County, WA, to points in California. Applicant's representative is: James Lettman, 13647—103 N.E., Kirkland, WA 98033. TA lease is not sought. Transferee is not a carrier.

MC–FC–79215. By decision of 6/25/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to PAUL JACKSON THOMAS, DOING BUSINESS AS, THOMAS TRUCKING, of Oakland, MD, of Certificate No. MC–125430 (Sub-Nos. 1 and 6) respectively June 9, 1980, and June 24, 1974, issued to WAGNER TRUCKING, INC., of McHenry, MD, authorizing the transportation of (Sub-No. 1) *Such commodities* as are dealt in by retail

grocery stores, from McKeesport and Belle Vernon, PA, to Oakland, MD, and Terra Alta, WV; *Lumber* (except plywood and veneer), from points in Garrett and Allegany Counties, MD, to points in Virginia and Fayette, Westmoreland, and Allegheny Counties, PA: *Lumber*, from Champion, PA, and points in Fayette and Greene Counties, PA, and Garrett County, MD, to points in North Carolina; *Fertilizer*, except in bulk, in tank vehicles, from York, PA, to Oakland, MD. (Sub-No. 6) *Animal and poultry feed*, from Bellevue, Marion, and Circleville, OH, to points in Allegany and Garrett Counties, MD: *Building stone*, from Frostburg, MD, to Wilmington, DE, Detroit, MI, and Highland Park, IL, and points in Pennsylvania, West Virginia, and Ohio. Applicants' representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005.

MC-FC-79224. By decision of July 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Gibson Truck Lines, Inc. of Certificate No. MC-58166 (Sub-Nos. 3 and 7) issued to Fred T. Gibson doing business as Gibson Truck Lines generally authorizing the transportation of *livestock, hay, grain, farm machinery and parts, farm implements and parts, seeds, feeds and fertilizer, and wool, ingreave*, from, to and between specified points in Colorado and New Mexico. Applicant's representative is: Nancy P. Bigbee, Esq., 1600 Sherman Street, Suite 450, Capitol Life Center, Denver, CO 80203. Condition: Applicants have filed an application in No. MC-58166 (Sub-No. 17), which they state is directly to the instant transfer application. That application, however, seeks new authority and is not necessary to facilitate the existing operations under the authority to be transferred is in this proceeding. Consequently, that application in No. MC-58166 (Sub-No. 17) is not directly related to this proceeding and separate filing fees as required. Since the applicants remitted a fee of $350 (applicable to the operating rights application), an approval of this application will be conditioned upon the filing of a $100 fee.

Note.—An application for temporary has been filed.

MC-FC-79228. By decision of July 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to CHARLES R. SCOTT, d/b/a/ Admiral Moving Services, Inc. of Fayetteville, AR of (1) Certificate No. MC-39134 issued September 16, 1940 and of (2) Certificate No. MC-39134 (Sub-No. 1) issued October 16, 1969 to Red ball transfer & Storage Company, Inc. of Fayetteville, AR, later to be named ADMIRAL MOVING SERVICE OF FAYETTEVILLE, INC., authorizing the transportation by irregular routes of (1) *household goods*, between points in Washington County, AR, on the one hand, and, on the other, points in Oklahoma and Kansas, and (2) *used household goods*, between points in Benton, Boone, Carroll, Madison, and Washington Counties, AR respectively. The authority in Certificate No. MC-39134 (Sub-No. 1) is restricted to the transportation of traffic having prior or subsequent movement, in containers, beyond the points authorized. Said operations are further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic. Applicant's representative is: Blaine A. Jackson, Box 658, Bentonville, AR 72712.

MC-FC-79236. By decision of July 7, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Don's Moving & Delivery system, Inc., of Janesville, WI, of a portion of Certificate No. MC-110672 (Sub-No. 1) issued to J&W Transfer and Storage, Inc., authorizing the transportation of *Fertilizer, chemicals, food, seed*, and *building and fencing material*, From points in that part of Illinois north of a line beginning at the Illinois-Indiana State line near sheldon, Ill., and extending west along U.S. Highway 24 to Peoria, Ill., thence along U.S. Highway 50 to Galesburg, Ill., and thence along U.S. Highway 34 to the Illinois-Iowa State line, including points on the indicated portions of the highways specified, to points in Rock, Walworth, Green, and Dane Counties, Wis. (not including the incorporated municipalities of Edgerton, Clinton, and Milton, Rock County, Wisconsin, Delavan, Elkhorn, Lake Geneva, Whitewater, East Troy, Fontana, Genoa City, sharon, Walworth, and Williams Bay, Walworth County, Wisconsin, Bredhead, Albany, Brooklyn, and Browntown, Green County, Grove, Cross Plains, Dane, Deerfield, De Forest, McFarland, Marshall, Masomanie, Middleton, Mount Horeb, Oregon, Rockdale, Shorewood Hills, Sun Prairie, Verona, Waunakee, Madison, and Stoughton, Dane County, Wisconsin), *Farm implements and parts*, From points in the immediately above-specified Illinois territory to points in Rock, Walworth, Green, and Dane Counties, WI.

MC-FC-79239. By decision of July 7, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Murray Trucking, Inc. of Certificate No. MC-121223 (Sub-Nos. 3F, 6, 8F, 9F, 10F and 12F) issued June 3, October 16, May 28, July 7, August 28, and October 6, 1980 respectively to George Halden Sons, Inc., generally authorizing the irregular-route transportation of *roofing and roofing material; iron and steel articles and related materials* used in manufacture thereof: *general commodities*, railway car-parts, over irregular routes, in Ohio, Indiana, Kentucky, Michigan, New York, Pennsylvania, West Virginia, Alabama, Florida, Georgia, Missouri, Illinois, Arkansas, Iowa and Kansas. Applicant's representative is: Stephen J. Habash, Esq., Bakers & Hostetler, 100 East Broad Street, Columbus, OH 43215. Transferee presently holds authority from the Commission in the No. MC-152390 docket number series.

MC-FC-79240. By decision of July 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to SUNCO TRUCKING COMPANY of Farmington, NM of Certificate No. MC-104951 (Sub-No. 1) issued May 21, 1958 to W. R. HALL TRANSPORTATION AND STORAGE COMPANY, of Grand Junction, CO, authorizing the transportation by irregular routes, of *heavy machinery*, between points in Mesa, Delta, Montrose, and Garfield Counties, CO, between points in the above-specified Colorado Counties, on the one hand, and, on the other, points in Utah, and New Mexico, *machinery, materials, supplies, and equipment*, incidental to, or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in Mesa, Delta, Montrose, and Garfield Counties, CO; between points in the Colorado Counties specified immediately above, on the one hand, and, on the other, points in that part of Utah on and south of a line beginning at the Colorado-Utah State line, and extending along U.S. Highway 50 to Spanish Fork, Utah, and thence along Alternate U.S. Highway 50 (formerly U.S. Highway 50) to the Utah-Nevada State line, and points in New Mexico; *construction machinery*, between points in Colorado on and west of a line beginning at a point on the Colorado-Wyoming State line at or near Battle Creek, CO, and extending along an unnumbered highway (formerly

Colorado Highway 129) to junction U.S. Highway 40, thence along U.S. Highway 40 to junction Colorado Highway 9, thence along Colorado Highway 9 to junction U.S. Highway 285, and thence along U.S. Highway 285 to the Colorado-New Mexico State line, on the one hand, and, on the other, points in Kansas, Nebraska, and Wyoming; *uranium and vanadium-bearing ores and concentrates*, between points in that portion of Arizona, New Mexico, Colorado, and Utah, including points (including Aurora, Utah) on the indicated portions of the specified highways, bounded by a line beginning at Grand Junction, CO, and extending along U.S. Highway 50 to Montrose, CO, thence along U.S. Highway 550 to junction New Mexico Highway 44, thence along New Mexico Highway 44 to junction New Mexico Highway 56, thence along New Mexico Highway 56 to junction U.S. Highway 66, thence along U.S. Highway 66 to junction U.S. Highway 89, thence along U.S. Highway 89 to junction U.S. Highway 50, and thence along U.S. Highway 50 to the point of beginning, between points in the area specified immediately above, on the one hand, and, on the other, points in Colorado, and Utah; *livestock*, between points in Mesa, Delta, Montrose, Garfield, Rio Blanco, and Moffit Counties, CO, on the one hand, and, on the other, points in Colorado and Utah. Applicant's representative is: William S. Richard, P.O. Box 2465, Salt Lake City, UT 84110.

MC–FC–79241. By decision of July 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to David Moen and Clair Moen, A partnership, D/B/A Moen Truck Line of Langdon, ND 58249 of Certificate No. MC–134867 issued to Alfred Moen and Earl Moen, A partnership, D/B/A Moen Truck Line of Nekoma, ND 58355 authorizing irregular routes, transporting *General commodities*, except classes A and B explosives, articles of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, Between Fargo, N. Dak., on the one hand, and, on the other, points in Cavalier County, N. Dak., points in that part of Ramsey and Walsh Counties bounded on the west by a line beginning at the Ramsey-Cavalier County line and extending south along North Dakota Highway 20 to Webster, N. Dak., on the south by a line beginning at Webster, N. Dak., and extending east along an unnumbered highway to Broket, N. Dak., thence along the southern boundary of Walsh County to its intersection with North Dakota Highway 32, and on the east by a line beginning at said intersection of North Dakota Highway 32 and the southern boundary of Walsh County, and extending north along North Dakota Highway 32 to the Pembina County line, thence west along the southern boundary of Pembina County to the eastern boundary of Cavalier County, including points on the indicated portions of the highways and county lines specified. Applicants' representative: David Moen, Box 309, Langdon, ND 58249. TA lease is not sought. Transferee is not a carrier.

MC–FC–79242. By decision of July 13, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Southern Tier Copy Products, Inc., doing business as WHITNEY TRANSPORT, of Binghamton, NY, of Permit No. MC–110214 issued March 8, 1949, to Francis F. Gitchell, of Binghamton, NY, authorizing the transportation of such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses, and equipment, materials, and supplies, used in the conduct of such business, over irregular routes, (1) between Binghamton, NY, and points within 5 miles of Binghamton, on the one hand, and, on the other, points in New York and Pennsylvania within 125 miles of Binghamton and (2) between Binghamton, on the one hand, on the other, Carlstadt, N.J. Applicant's representative is: Raymond A. Richards, 35 Curtice Park, Webster, New York 14580.

MC–FC–79243. By decision of July 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Container Transport, Inc., of Certificate No. MC–148550F issued November 21, 1980 to Jesse C Dahl, doing business as Container Transport Service, of Lynnwood, WA, authorizing the transportation, over irregular routes, of general commodities (except classes A and B explosives) between points in the commercial zones of (a) Seattle, WA, and (b) Tacoma, WA, restricted to the transportation of traffic having a prior or subsequent movement by water. Applicant's representative is: Ray Weberg, 7805 South 134th Street, Seattle, WA 98178.

MC–FC–79244. By decision of July 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Calvin O. King, D/B/A A.O.K. Trucking of Certificate Nos. MC–135696 and No. MC–135696 (Sub-Nos. (1), (4) and (6)) issued to Lakeport Trucking and authorizing the transportation of: No. MC–135696 *Alfalfa products* From Oak Harbor and Toledo, OH to points in Michigan, Indiana, Kentucky and Pennsylvania. *Beet pulp* from Findlay and Fremont, OH to points in Michigan, Indiana, Kentucky and Pennsylvania. No. MC–135696 (Sub-No. 1) *Feed and feed ingredients* in bags from N. Baltimore, OH to points in Michigan, Indiana, Kentucky, Pennsylvania, West Virginia and New York. No. MC–135696 (Sub-No. 4) *Beet pulp* from Findlay and Fremont, OH to Huron and Toledo, OH (restricted to shipments in foreign commerce). No. MC–135696 (Sub-No. 6) *Alfalfa products* from Blissfield, MI and Holyville, OH to points in Michigan, Ohio, and Pennsylvania and points in Augusta and Rockingham Counties, VA, from Toledo, OH to points in New York and Virginia. Subject to the following conditions: if any. Applicants' representative is: Richard H. Brandon, Attorney-At-Law, 220 West Bridge Street, P.O. Box 97, Dublin, OH 43017.

MC–FC–79245. By decision of 7/13/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to ZIELINSKI CONSTRUCTION CORP., of Agawam, MA, of Permit No. MC–147257 (Sub-No. 2) issued to CHILD BROS, INC., of Dixfield, ME; authorizing *coal*, in bulk, in dump vehicles, (1) from Westbrook and Winslow, ME to Jackman, ME; (2) from Portland and Bath, ME, to points in Maine; and (3) from West Springfield, MA, to points in Massachusetts, New Hampshire, Connecticut, New York, and Vermont, under contract with Zielinski Brothers, of Agawam, MA. Applicant's representative: Edward Zielinski, 218 Shoemaker Line, Agawam, MA 01001. TA lease is not sought. Transferee is not a carrier.

MC–FC–79257. By decision of August 21, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to RGJ CORPORATION of Certificate No. MC–119035 issued October 19, 1966 to GOULDING'S MONUMENT VALLEY TOURS authorizing the transportation of passengers and their baggage: in special operations, in round-trip sightseeing, pleasure, and photographic tours, beginning and ending at Kayenta, AZ, and Goulding's Trading Post Moab, Green River, and Monticello, UT, and extending to points in Utah, and those in Apache and Navajo Counties, AZ. Applicant's representative: Irene Warr,

311 S. State St., Ste. 280, Salt Lake City, UT 84111.

MC-FC-79258. By decision of July 16, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to YUMA COUNTY TRANSPORTATION CO., of Grand Island, NE, of the operating authority in Certificate No. MC-97764 (Sub-No. 1), issued to John A. Klever, d.b.a. KLEVER TRANSFER, and which was awarded to LELAND C. RIDGWAY, d.b.a. RIDGWAY TRANSFER, of Fairfield, NE, by decision served June 11, 1980, in MC-FC-78461, which authorizes the transportation of the following: (A) Regular routes: (1) *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment, between Edgar, NE and Omaha, NE, serving the intermediate points of Lincoln and Sutton, NE, and the off-route points of Fairfield, Deweese, Angus, Shickley, and Davenport, NE: From Edgar over unnumbered highway to junction U.S. Highway 6 at a point near Saronville, NE, then over U.S. Highway 6 to junction Nebraska Highway 31, then over Nebraska Highway 31 to Millard, NE, then over Nebraska Highway 50 to junction Nebraska Highway 38, and then over Nebraska Highway 38 to Omaha, and return over the same route. (2) *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Fairfield, NE, and Hastings, NE, serving no intermediate points, and serving Glenvil, NE, as an off-route point: From Fairfield over Nebraska Highway 74 to junction U.S. Highway 281, then over U.S. Highway 281 to Hastings, and return over the same route. (B) Irregular routes: (1) *Household goods*, between Edgar, NE, and points within 20 miles of Edgar, on the one hand, and, on the other, points in Iowa, Kansas, Missouri, Colorado, and Illinois. (2) *Livestock and agricultural commodities*, between Edgar, NE, and points within 20 miles of Edgar, on the one hand, and, on the other, points in Iowa, Kansas, Missouri, South Dakota, and Colorado. Applicants' representative: Donald L. Stern, Suite 610, 7171 Mercey Road, Omaha, NE 68106. N0321; Verification for TA has been filed. Transferee holds authority to operate as a motor carrier under MC-96877. Condition: Since the transfer to Ridgway was only approved recently, the parties did not enclose a certificate issue to Ridgway by the Commission. Accordingly, this approval is conditioned on the issuance of a certificate of public convenience to Ridgway, or, in the alternative, compliance by Ridgway with the statutory and regulatory requirements leading to the issuance of said certificate.

MC-FC-79267. By decision of August 17, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Hub City Transfer and Storage Co., Inc. Certificate No. MC-128892 issued April 25, 1968 to Conrad Industries, Inc. authorizing the transportation of (1) *lumber*, from points in Hood River and Wasco Counties, OR, and those in that part of OR west of the summit of the Cascade Mountains, to points in Clark, Cowlitz, Lewis, Grays Harbor, Mason, and Thurston Counties, WA, and (2) *silicon metals*, from in Lewis County, WA, to points in Clatsop, Multnomah, and Wasco Counties, OR. Applicants' representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101.

Notes.—(1) Transferee is a motor common carrier pursuant to certificate No. MC-1796, (2) No application for temporary authority has been filed.

MC-FC-79272. By decision of July 24, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to DANRICH TOUR COMPANY, INC., d.b.a. DANRICH TOURS, of Metairie, LA, of License No. MC-12990 issued January 7, 1980, to MRS. CATHERINE HOWLETT SCOTT, d.b.a KIT SCOTT TOURS, of New Orleans, LA, authorizing operations as a *broker*, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of passengers and their baggage, in special and charter operations, in round-trip tours, beginning and ending at New Orleans, LA, and extending to points in the United States, except points in Alaska and Hawaii. Representative: Daniel Baxter Scott, 2113 Veterans Blvd., Metairie, LA 70002.

Notes.—TA application has not been filed. Transferee is a non-carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-24049 Filed 8-17-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enforce Compliance With Provisions of the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 4, 1981, a proposed consent decree in *Brooks Run Coal Company* v. *Costle*, No. 80-2278, was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree provides for compliance with the Clean Water Act at the company's Erbacon, West Virginia, coal mining and preparation plant tract. The proposed decree requires the company to comply with new source environmental review and permitting requirements under the Clean Water Act.

The Department of Justice will receive on or before September 17, 1981, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Brooks Run Coal Company* v. *Costle*, D.J. Ref. 90-5-1-1-1445.

A proposed consent decree may be examined at the Office of the United States Attorney, Southern District of West Virginia, Room 4106, Federal Building, 500 Quarier Street, Charleston, West Virginia 25301; at the Region III Office of the United States Environmental Protection Agency, Enforcement Division, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1254, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 81-24033 Filed 8-17-81; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action To Enjoin Discharge of Air and Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 21, 1981, a proposed consent decree in *United*

States v. *Dow Chemical Company* was lodged with the United States District Court of the Eastern District of Michigan, Southern Division. The proposed decree would require Dow Chemical Company to reduce sulfur dioxide, particulate matter, and visible emissions from 10 coal or oil-fired boilers located at the company's manufacturing facility in Midland, Michigan. The decree also provides that Dow Chemical Company will pay a civil penalty of $240,000 to the United States.

The Department of Justice will receive on or before September 17, 1981, written comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Dow Chemical Company*, D.J. Ref. 90-5-2-1-101.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Michigan, 231 West Lafayette, Detroit, Michigan, or at the Region V Office of the Environmental Protection Agency, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois 60604, or at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 1254), Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 81-24004 Filed 8-17-81; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of Kentucky

This notice announces the ending of the Extended Benefit Period in the State of Kentucky, effective on August 1, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Kentucky on June 1, 1980, and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State of Kentucky has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on July 11, 1981, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on August 1, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Kentucky should contact the nearest State Employment Office of the Kentucky Department for Human Resources in their locality.

Signed at Washington, D.C., on August 3, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-24003 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of Mississippi

This notice announces the ending of the Extended Benefit Period in the State of Mississippi, effective on August 15, 1981.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, or in the nation as a whole, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State or in all States collectively reaches the State or National trigger rates set in the Act and the State law. 20 CFR 615.12. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rates set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Mississippi

on July 13, 1980, and has now triggered off.

Determination of "Off" Indicator

The head of the employment security agency of the State of Mississippi has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on July 25, 1981, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in that State.

Therefore, the Extended Benefit Period in that State terminated with the week ending on August 15, 1981.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State of Mississippi should contact the nearest State Employment Office of the Mississippi Employment Security Commission in their locality.

Signed at Washington, D.C., on August 12, 1981.

Albert Angrisani,

Assistant Secretary for Employment and Training.

[FR Doc. 81-24062 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Change in Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION: Contact James W. Higgins, Assistant Chief, Division of Labor Market Information, 601 D Street, NW (Attn: TPPL), Washington, D.C. 20213 (202) 376-7192.

SUPPLEMENTARY INFORMATION: The areas described below have been classified by the Assistant Secretary of Labor for Employment and Training as labor surplus areas for purposes of Executive Orders 12073 and 10582 pursuant to 20 CFR Part 654. Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under this Order for classifying and designating areas which are labor surplus areas. Under Executive Order 10582, executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. Areas of substantial unemployment are defined by Department of Labor regulations as labor surplus areas at 20 CFR 654.13.

The Department's labor surplus area classification procedures are set forth at 20 CFR Part 654. The regulations require that the Assistant Secretary for Employment and Training classify labor surplus areas and publish the labor surplus areas together with their corresponding geographic descriptions. Accordingly, the following additions to the annual list of labor surplus areas is published for the use of all Federal departments and agencies in directing procurement activity and locating new plants or facilities. The additions to the annual listing are effective August 1, 1981.

Labor Surplus Area and Political Jurisdiction Included

Georgia: Cherokee County—Cherokee County.
Massachusetts: City of Haverhill—Haverhill City in Essex County.
Rhode Island: City of Providence—Providence City.
Tennessee: Henry County—Henry County.

Signed at Washington, D.C. on August 5, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-24061 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Approval; Maryland State Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973 notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State Plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of Federal standards as State standards after comments and public hearing. Sections 1952.210–214 of Subpart O set forth the State's schedule for the adoption of Federal standards. By letters dated January 5, 1981 from Commissioner Harvey A. Epstein, Maryland Division of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.19(g); 1910.1000; 1910.1025 pertaining to Occupational Exposure to Lead as published in the **Federal Register** (43 FR 53007–53014) dated November 14, 1978 and (44 FR 5447–5448) dated January 26, 1979 and 29 CFR 1910.19(c) Occupational Exposure to Acrylonitrile (Vinyl Cyanide) and an amendment to 29 CFR 1910.19(e) pertaining to Occupational Exposure to Inorganic Arsenic. These standards, which are contained in COMAR 09.12.31 Maryland Occupational Safety and Health Standards, were promulgated after public hearing on July 23, 1980 pursuant to Article 41, section 25F(e), Annotated Code of Maryland and effective December 12, 1980 and June 27, 1980.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor & Industry, 203 East Baltimore Street, Baltimore, MD 21202; and the Technical Data Center, Room N2439R, Third Street and Constitution Avenue, NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be necessary.

This decision is effective August 18, 1981.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, PA, 2nd day of July 1981.

David H. Rhone,

Regional Administrator.

[FR Doc. 81-24077 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-26-M

Approval; Virginia State Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of Federal standards as State standards after comments and public hearings. Section 1952.370 of Subpart EE set forth the State's schedule for the adoption of Federal standards. By letter dated June 8, 1981 from Assistant Commissioner Clayton P. Deane, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparble to 29 CFR 1910.301-.399 pertaining to electrical standards.

These standards, which are contained in the Virginia Occupational Safety and Health Standards, were promulgated after public hearing held on May 28, 1981 pursuant to Section 40.1-22, Title 40.1, Code of Virginia. The Resolution was adopted by the Virginia Code Commission and is effective June 30, 1981.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241; and Technical Data Center, Room N2439R, Third Street and Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 18, 1981.

(Sec. 18, Pub. L. 91-596-84 Stat. 1608 (29 U.S.C. 667) [21Signed at Philadelphia, PA this 1st day of July, 1981.

David H. Rhone,

Regional Administrator.

[FR Doc. 81-24075 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-26-M

Approval; Virginia State Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of Federal standards as State standards after comments and public hearings. Sections 1952.370-374 of Subpart EE set forth the State's schedule for the adoption of Federal standards. By letter dated May 26, 1981 from Assistant Commissioner Clayton P. Deane, Virginia Department of Labor and Industry to David H. Rhone, Regional Administrator and incorporated as part of the plan, the State submitted State standards comparable to (1) amendments to 29 CFR 1910.35, 1910.37, 1910.38, 1910.107-.109, 1910.155-.165(b), Appendix to 29 CFR Part 1910, Subpart E and Appendices A through E to 29 CFR Part 1910, Subpart L, all pertaining to fire protection, means of egress and hazardous materials, as published in the **Federal Register** (45 FR 60703-60727) dated September 12, 1980; (2) amendments to 29 CFR 1926.500 and .502 pertaining to guarding of low-pitched roof perimeters as published in the **Federal Register** (45 FR 75626-75631) dated November 14, 1980; and (3) amendments to 29 CFR 1910.20, 29 CFR Part 1910, Subpart Z, and 29 CFR 1913.10 pertaining to access to employee exposure and medical records, as published in the **Federal Register** (45 FR 35277-35283 and 35294-35297) dated May 23, 1980.

These standards, which are contained in the Virginia Occupational Safety and Health Standards, were promulgated after public hearing held on January 15, 1981 prusuant to Section 40.1-22, Title 40.1, Code of Virginia.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241; and Technical Data Center, Room N2439R, Third Street and

Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 18, 1981.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, PA this 18th day of June, 1981.

David H. Rhone,

Regional Administrator.

[FR Doc. 81-24076 Filed 8-17-81; 8:45 am]

BILLING CODE 4510-20-M

LEGAL SERVICES CORPORATION

Grants and Contracts

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract, or project. . . ."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: Northwestern Legal Services in Erie, Pennsylvania to serve Mercer County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Philadelphia Regional Office, 101 North 33rd Street, Suite 404, Philadelphia, PA 19104.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 81-23976 Filed 8-17-81; 8:45 am]

BILLING CODE 6820-35-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees

In accordance with Pub. L. 94-463, the Board of Trustees of the American Folklife Center announces its meeting to be held on September 15, 1981, in the Whittall Pavilion of the Library of Congress from 9:30 a.m. to 5 p.m. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Eleanor Sreb, American Folklife Center, (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publication, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has begun energetically to carry out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 81-24039 Filed 8-16-81; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Women in Science & Technology.

Place: Rm. 1141, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Wednesday, September 16, and Thursday, September 17.

Time: 10:00 a.m. to 4:00 p.m.

Type of meeting: Open.

Contact person: Mrs. Mary Poats, Executive Secretary of the Committee, National Science Foundation, Rm. 537, 1800 G Street, N.W., Washington, D.C. 20550 Telephone: 202/357-9571.

Purpose of subcommittee: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for women in science and technology, and the impact of science and technology on women.

Summary minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to considered mechanisms to increase participation of women in Foundation programs and research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to women appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Coordinator.

August 13, 1981.

[FR Doc. 81-24023 Filed 8-17-81; 8:45 a.m.]

BILLING CODE 7555-01-M

Committee Management Advisory Committee on Special Research Equipment (2-Year and 4-Year Colleges); Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, it is hereby determined that the renewal of the Advisory Committee on Special Research Equipment (2-Year and 4-Year Colleges) is necessary and is in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, GSA, as required by the Federal Advisory Committee Act.

Authority for this Advisory Committee will expire on August 19, 1983, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

Donald N. Langenberg,

Deputy Director.

[FR Doc. 81-24022 Filed 8-17-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 58 to Operating License No. DPR-59, issued to the Power Authority of the State of New York, which revised the Technical Specifications for operation of the James A. FitzPatrick Nuclear Plant (the facility) located in Oswego County, New York. The amendment is effective as of the date of its issuance.

The amendment revises the provisions in the Technical Specifications to expand the bases for the numerical distribution of safety/relief valve setpoints.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated April 28, 1981, (2) Amendment No. 58 to License No. DPR-59, and (3) the Commission's letter to the licensee dated August 12, 1981. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Penfield Library, State University College at Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of August 1981.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 81-24079 Filed 8-17-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric and Gas Co., Philadelphia Electric Co., Delmarva Power and Light Co., and Atlantic City Electric Co.; Grant of Relief From ASME Section XI Inservice Inspection Requirements

The Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Public Service Electric and Gas Company. The relief related to the inservice inspection program for the Salem Nuclear Generating Station Unit No. 1 located in Salem County, New Jersey. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of August 12, 1981.

The relief permits Public Service Electric and Gas Company to postpone the inspection of welds in one specified component of the reactor vessel, to substitute alternative techniques for examining the cladding of the reactor vessel, and to substitute alternative techniques for examining welds in a total of six locations on the reactor vessel, piping pressure boundary and pump casings. The alternatives provided by this relief enable acceptable inspections to be made of components that are not amenable to inspection by methods in the ASME Code by reason of inaccessibility, geometry of component, or incompatibility of metal, radiation level or technique.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the licensee's request for relief dated December 17, 1976, as supplemented June 28, 1977, (2) the Commission's letter dated August 12, 1981, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of August, 1981.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-24080 Filed 8-17-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on September 2 and 3, 1981, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the proposed rule on Technical Criteria for Disposal of High-Level Radioactive Wastes in Geological Repositories (10 CFR 60) and the Licensing Requirements for Land Disposal of Radioactive Waste (10 CFR 61).

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, September 2, 1981—8:30 a.m. until the conclusion of business

Thursday, September 3, 1981—8:30 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant employee, Mr. Garry Young (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EDT. The Designated Federal Employee for this meeting is Mr. John C. McKinley.

Dated: August 12, 1981.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 81–24000 Filed 8–17–81; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

[Policy Letter 81–1]

Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases

August 13, 1981

To the heads of Executive Departments and Establishments:

It is the responsibility of the head of each agency to assure efficient and economical procurement. Consistent with that responsibility is an obligation to reduce wasteful practices resulting from hurried or unnecessary end-of-year procurement. In carrying out these responsibilities, the Head of each Executive Department or Establishment shall establish the following management controls:

1. *Procurement procedures providing lead time and cut-off dates.* Each agency shall develop procedures that allow sufficient lead time to prepare solicitations, obtain and evaluate bids or proposals, audit, negotiate, and make contract awards in an orderly manner. The procedures shall specify the lead time required and establish firm cut-off dates for submission to procurement offices of requests for contract action to be completed by the end of a fiscal year. The lead times and cut-off dates may vary with the type of contract action and dollar thresholds. Exceptions to the lead time and cut-off date procedures should be kept to a minimum and approved only under extraordinary circumstances.

2. *Advance Procurement Planning.* Agencies shall issue procedures that require an Advance Procurement Planning System (APP) for each activity. The procedures shall include:

—Establishment of a specific threshold above which procurements are to be considered major;

—Development and maintenance of an advance procurement plan to cover major procurement requirements and other requirements with high waste vulnerability, such as consulting services, certain equipment, periodicals, pamphlets, or audiovisual products. The plan should be developed well in advance of the fiscal year in which the acquisition will be made;

—Flexibility to allow revisions to the plan, but only to reflect budget changes, emergencies, and changes in program direction;

—Procurement planning that begins concurrently with the agency budget process;

—A requirement that needs are specified in a form that permits effective competition and innovation;

—A means to resolve disagreements between procurement and project offices;

—Close control of major and high waste vulnerability purchases to assure that they are consistent with the advance procurement plan; and

—An ongoing program to assess the appropriateness of the methods used to satisfy needs, including cost effectiveness, whether gold-plating will result, and life cycle costing, where appropriate.

3. *Review procedures for the last quarter spending.* Each agency shall develop review procedures that require: (a) close control of purchases made in the last quarter to assure that they are consistent with the advance procurement plan, (b) reevaluation of the need for purchases made in the last quarter, (c) good procurement practice and accountability to assure that contracts are awarded only if prices are reasonable, and (d) award of contracts on the basis of competition unless award on some other basis is significantly to the advantage of the agency.

4. *Contract Action Log.* Each procuring activity shall keep a log of a major or high waste vulnerability contract actions.

Within 60 days after the effective date of this letter the head of each agency shall report to OFPP the action taken to implement the provisions of this Policy Letter. The report shall describe the advance procurement planning process, the procedures to require lead time and cut-off dates, the review procedures, and the implementation of the contract log.

For further information with respect to this policy directive, contact Mr. Jack Nadol, Assistant Administrator for Procurement Practices, telephone 395–3455.

Effective date: This Policy Letter is effective August 28, 1981.

Concurrence: This letter has been concurred in by the Director of OMB.

Donald E. Sowle,

Administrator.

[FR Doc. 81–24041 Filed 8–17–81; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Public Meeting

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committees Act, that the twelfth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research will be held at the Los Angeles Hilton Hotel, Los Angeles, California, from 9:00 a.m. to 5:00 p.m. on Friday, September 11, 1981 and from 9:00 a.m. to 5:30 p.m. on Saturday, September 12, 1981.

The meeting will be open to the public, subject to limitations of available space. The agenda for Friday, September 11 will include among other things: (1) institutional arrangements for implementing federal regulations and resolving problems in the conduct of biomedical research, and the role of the IRB within that organizational structure; and (2) discussion of a draft report on Compensating for Research Injuries. The agenda for Saturday, September 12 will include, among other things: (1) decisions to forego life-sustaining therapy; and (2) continuation of discussion of the draft report on Compensation for Research Injuries.

During each afternoon, fifteen minutes will be devoted to comments from the floor on the subject of any of the agenda items, limited to three minutes per comment. Written suggestions and comments will be accepted for the record from those who are unable to speak because of the constraints of time and from those unable to attend the meeting.

Records shall be kept on all Commission proceedings and will be available for public inspection at the Commission's office, located in Suite

555, 2000 K Street, N.W., Washington, D.C. 20006.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653–8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 81-24081 Filed 8-17-81; 8:45 am]

BILLING CODE 6820-AV-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22158; (70-6623)]

Alabama Power Co.; Proposed Issuance and Sale of Short-Term Notes to Banks

August 13, 1981.

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

Alabama is currently negotiating the issue and sale from time to time, through September 30, 1982, of short-term notes to banks up to an aggregate principal amount at any one time outstanding of $400,000,000. The bank borrowings will be evidenced by notes to be dated the date of the borrowing and to mature not more than nine months after the date of issue. Domestic borrowings will be prepayable in whole or in part without penalty or premium.

On or prior to October 1, 1981, Alabama proposes to extend its Revolving Credit Agreement with a group of banks located outside the State of Alabama. This agreement presently extends to September 30, 1981. The proposed extention would provide a revolving line of credit for one year in an amount not to exceed $200,000,000 at any one time outstanding. A commitment fee (based on the unused portion of the commitment) at the rate of ½ of one percent per annum will be charged. The proposed agreement provides for domestic borrowings or Eurodollar borrowings, at the option of Alabama, at the time of each advance of funds.

On domestic borrowings, the interest rate is based upon a fluctuating interest rate per annum equal to 103% of the higher of (a) the rate of interest announced publicly by Citibank in New York from time to time as Citibank's base rate, or (b) ½ of one percent above the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks. Assuming full usage and a base rate of 20% at Citibank, the effective borrowing cost under the domestic borrowings option would be 20.85%.

On Eurodollar borrowings, the interest rate for each borrowing would be an interest rate per annum equal at all times during the term of such borrowing to 103% of the sum of the LIBOR for such term plus ½ of one percent. The LIBOR for each Eurodollar borrowing would be the rate per annum at which deposits in U.S. dollars are offered by the principal office of Citibank in London, England at 11:00 a.m. (London time) two business days before the date of such borrowing for a period equal to the term of such borrowing and in an amount substantially equal to the amount of such borrowing. Assuming full usage, a LIBOR of 18.50% and reserve requirements of 1.12% on all banks which are parties to the Revolving Credit Agreement, the effective borrowing cost under the Eurodollar borrowings option would be 20.03%.

For all borrowings, the interest rate will be ¼ of one percent higher than the rate determined above unless the first mortgage bonds of Alabama are upgraded to single A category by either of the two major rating agencies. The interest rate is increased by ½ (rather than ¼) of one percent per annum during a period when the first mortgage bonds of Alabama are downgraded below either the lowest Baa rating category at Moody's Investor Service, Inc. or BBB rating category at Standard & Poor's Corporation.

In addition to the proposed extension of the Revolving Credit Agreement, Alabama proposes to borrow from various other banks up to an aggregate principal amount at any one time outstanding of $92,065,000. Each note evidencing such borrowings will bear interest at an effective rate per annum in effect at the lending bank customary for companies similar to Alabama, which, based upon a prevailing rate of 20% and the maintenance of compensating balances of 15% of amounts borrowed, would result in an effective borrowing cost of 23.53%.

As additional lines of credit are needed for the balance of the principal amount of borrowings for which authorization is sought, Alabama anticipates, although it cannot be assured, that such terms in connection therewith, would be similar to the current lines of credit. The terms of such borrowings will be filed by post-effective amendment and will require further authorization.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 8, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a 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 this matter. After said date, the application as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-24065 Filed 8-17-81; 8:45 am]

BILLING CODE 8010-01-M

[812-4822, Rel. No. 11906]

American Birthright Trust Tax-Managed Fund for Utility Shares, Inc.; Filing of Application for an Order of the Commission Amending a Previous Order

Notice Is Hereby Given that American Birthright Trust and Tax-Managed Fund For Utility Shares, Inc. ("Applicants"), 247 Royal Palm Way, Palm Beach, Florida 33480, each registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified, management investment company, filed an application on July 31, 1981, and an amendment thereto on August 5, 1981, pursuant to Section 6(c) of the Act, requesting an order of the Commission amending previous orders of the Commission dated July 1, 1981 (Investment Company Act Release No. 11840), April 29, 1981 (Investment Company Act Release No. 11752), and February 24, 1981 (Investment Company Act Release No. 11644). Applicants further request that such order be made effective as of August 15, 1981, on a temporary basis pending issuance of a permanent order following appropriate notice and opportunity for a hearing. The previous Commission orders temporarily exempted Applicants from certain provisions of Section 16(a) of the Act to permit pursuant to a court order three "disinterested" persons and one new "interested" person to serve on the

board of directors or board of trustees of the Applicants until Applicants' 1981 annual meetings of shareholders. The amended order would extend the time period of the exemption to December 1, 1981, from August 14, 1981, the expiration date specified in the Commission's order dated July 1, 1981.

Applicants state that on December 30, 1980, the United States District Court for the District of Columbia entered an order in *Securities and Exchange Commission* v. *American Birthright Trust Management, Inc. et al.*, Civil Action No. 80–3306 ("Court Order"). The entry of that Court Order resulted in the settlement of an injunctive action brought by the Commission against the investment adviser, officers of the investment adviser, and the directors and trustees of the Applicants as a result of certain alleged violations of the Securities Act of 1933 and the Act committed by the above entity and individuals in their administration of the affairs of the Applicants. Among other things, the Court Order required that American Birthright Trust Management, Inc. ("Adviser"), the investment adviser of the Applicants, and the officers of the Adviser take action to ensure that at least 60% of the members of the board of trustees of American Birthright Trust and board of directors of Tax-Managed Fund For Utility Shares, Inc. would consist of disinterested directors or trustees having no previous affiliation with any of the defendants in this case and with whom the Commission shall have no objection. Pursuant to that provision of the Court Order all but one member of Applicants' previous boards resigned and were replaced by four individuals, three of whom had no previous affiliation with any of the defendants in the injunctive action. Thus, only one member of Applicants' present boards has been elected by the shareholders of Applicants.

Section 16(a) of the Act provides, in part, that, except for the filling of certain vacancies on a board of directors, no person can serve as a director of a registered investment company unless elected by shareholders. In the event that at any time less than a majority of directors have been elected by shareholders, Section 16(a) of the Act requires that a special meeting of shareholders be held within sixty days for the purpose of electing directors to fill any existing vacancies on the board unless the Commission shall, by order, extend such period. In order to prevent their Boards from being improperly constituted after February 28, 1981, Applicants filed an application on February 12, 1981, requesting, pursuant to Section 6(c) of the Act, a temporary order of exemption from certain provisions of Section 16(a) of the Act until April 30, 1981. The Commission issued such an order on February 24, 1981. (Investment Company Act Release No. 11644).

In their application filed on February 12, 1981, Applicants stated that their new Boards, assisted by independent counsel, were actively engaged in reviewing the advisory and service contracts with the Adviser as required by the Court Order. Applicants further stated that the Boards had determined that they required additional time within which to complete their review, but that it was intended that the review be completed in sufficient time to permit proxy statements for the 1981 annual meetings of shareholders to reflect the results of those deliberations.

Subsequently, on March 23, 1981, and on June 8, 1981, Applicants filed amendments to their application requesting extensions of the time for the temporary exemption from certain provisions of Section 16(a) of the Act, to June 30, 1981, and to August 14, 1981, respectively. The Commission granted the requested extensions of time by orders dated April 29, 1981 (Investment Company Act Release No. 11752) and July 1, 1981 (Investment Company Act Release No. 11840). In support of the requested extension of time to August 14, 1981, Applicants stated, among other things, that following an intensive review of Applicants' investment advisory and service contracts with the Adviser, Applicants' Boards had determined to renegotiate such contracts. Applicants further stated that the Boards had approved and determined to submit proposed new investment advisory and service contracts between Applicants and the Adviser to shareholders, but that there was insufficient time between the date of their amended application and the June 30, 1981, expiration date of the temporary exemptive order in which to solicit proxies in sufficient numbers to obtain a quorum.

In support of their request for a further extension of the temporary order Applicants state that prior to submission of the proposed new investment advisory and service contracts to shareholders for their approval, certain questions of interpretation with respect to the terms and provisions of such contracts arose. Applicants state that after further discussion the Boards and the Adviser determined that an agreement in principle with respect to new investment advisory and service contracts had not been reached. Accordingly, Applicants represent that the Boards withdrew their approval of such contracts and their recommendation that the contracts be submitted to shareholders for their approval, and the Boards determined to enter into new negotiations with the Adviser. Applicants state that on July 28, 1981, the Boards and the Adviser concluded such negotiations by reaching agreement in principle on the terms of new investment advisory and service contracts. Such negotiations, Applicants state, consumed the period of time during which it had been planned to solicit proxies and hold shareholder meetings, which had been tentatively scheduled for July 28, 1981. However, such meetings were postponed due to the delay in submitting new investment advisory and service contracts to shareholders.

Applicants maintain that, although the Boards have now renegotiated, approved and determined to submit for shareholder approval proposed new investment advisory and service contracts, there is not sufficient time prior to August 14, 1981, in which to solicit proxies in sufficient numbers to obtain a quorum. According to Applicants the requested extension of the temporary order until December 1, 1981, will allow adequate time for Applicants to prepare proxy materials to be used in connection with their 1981 annual meetings of shareholders (which are currently expected to occur during the last week of September or the first week of October), to obtain review and clearance of such materials from the Commission staff, and to schedule annual meetings of shareholders and solicit proxies in connection with such meetings in sufficient numbers to obtain a quorum. In addition, Applicants state that the requested extension of the temporary order until December 1, 1981, will provide Applicants with sufficient flexibility in the event that it becomes necessary to postpone further the 1981 annual meetings of shareholders as a result of unforeseen circumstances.

Applicants contend the holding of special shareholders' meetings in order to elect directors or trustees (in addition to the annual meetings at which the proposed new contracts will be considered) would impose an unnecessary and inappropriate burden on them, and would constitute an unjustifiable cost to their shareholders. Applicants further contend that other factors cited by the Commission in its order of February 24, 1981, including the District Court's entry of the Court Order, the concurrence of the Commission with the terms of the Court Order, and the

temporary nature of the exemptive relief sought, remain applicable to its request for amendment of the Commission's temporary exemption. Applicants conclude that, in light of the foregoing, the requested amended order is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants further request that extension of the temporary order be made effective as of August 15, 1981, on a temporary basis pending issuance of a permanent order following appropriate notice and opportunity for a hearing. Applicants believe that the granting of this additional request is both necessary and appropriate. Applicants state that unless the requested amended order is made effective on August 15, 1981, Applicants' Boards will not be properly constituted after August 14, 1981. In that event, the validity of Board actions taken after August 14, 1981, may be called into question. Accordingly, Applicants contend that if the requested order is not made effective on August 15, 1981, Applicants may be exposed unnecessarily to litigation or other action which would adversely affect Applicants' shareholders.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act, or any rule or regulation under the Act, 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.

The matter has been considered, and it is found, on the basis of the information stated in the application, that it is appropriate to issue the amended order requested by Applicants immediately, on a temporary basis, in view of the circumstances facing Applicants and the adverse consequences that might be experienced by investors in Applicants if the Commission did not issue the requested amended order by August 15, 1981. Accordingly,

It is ordered, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated July 1, 1981, contained in Investment Company Act Release No. 11840, to the extent requested, be and hereby is granted as of August 15, 1981, on a temporary basis;

It is further ordered, That the above temporary order shall remain in effect only until such time as the Commission shall by order: (1) terminate such temporary order after notice and opportunity for a hearing, or (2) terminate such temporary order by the issuance of a permanent order in this matter.

Notice is further given that any interested person may, not later than September 8, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–24025 Filed 8–17–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18027; File No. SR–NSCC–81–2]

National Securities Clearing Corp.; Proposed Rule Change by Self-Regulatory Organization

In the matter of; proposed Rule change relating to a change to the procedures for the Automated Stock Borrow Program.

Comments requested on or before

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 3, 1981, the National Securities Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. *Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

Text of Proposed Rule Change

NSCC Automated Stock Borrow Procedures

In the course of daily operations, NSCC's CNS System often has a priority need for stock (or bonds) that exceeds the shares made available via participant deliveries to clearing. This need can arise from several sources, including the satisfaction of participants, and the need to deliver against omnibus positions with other clearing corporations created as a result of interface transactions.

In order to improve the efficiency of the clearing system in dealing with these situations, NSCC's Board has authorized the implementation of limited automated stock borrow procedures (the Stock Borrow Program) to satisfy priority needs for stock that are not filled via normal deliveries from participants.

Firms wishing to participate in the program will notify NSCC each day of the securities they have on desposit at DTC that are available to be borrowed by the Clearing Corporation. After NSCC's nighttime processing of regular deliveries, any priority needs remaining unsatisfied will be borrowed from participants. Any shares borrowed will be entered into a special CNS sub-account and the participant will be advanced the full market value of the shares borrowed until they are returned. Borrowed stock will be returned through normal long allocation against the special sub-account as shares become available.

More specifically, the processing steps will be as follows:

1. Each day, firms wishing to participate in the program will inform NSCC of the number of shares of each security in their general unpledged account at DTC that are available to be borrowed. This information, in the form of blotters, cards or magnetic tape, must be submitted to the Clearing Corporation by 4:00 p.m. to facilitate the borrowing of physical securities for the settlement of interface balance orders. NSCC will also accept availability information on non-DTC eligible securities that are in the participant's possession. Data to be submitted to

indicate availability will be broker number, CUSIP number, available shares, and a location code to indicate whether DTC or physical. Availability information submitted earlier in the day can be modified up until 6:00 p.m. completing and returning a special adjustment form.

2. After regular nighttime allocation processing, NSCC will attempt to borrow any priority needs for stock that still remain unsatisfied. Borrowing will be done versus the participants that have indicated an availability in each security. The full amount indicated as available by a participant will be utilized prior to borrowing anything from the next selected participant in sequence. The actual formula NSCC will use to determine the order in which it will borrow securities made available by participants to meet NSCC's system needs is as follows:

Step I: On each day, each participant will be assigned a random allocation number, for each security made available to NSCC for potential borrowing.

Step II: A factor for each firm will be developed by dividing (1) the percentage of each member's average loans as they relate to the total NSCC borrowings by (2) the percentage of each member's average fees paid for trade comparison, trade recording and clearance as they relate to the total of these fees for all members.

Step III: Each random allocation number assigned in Step I will then be multiplied by the factor developed in Step II to produce an adjusted random number per position for each member. Each potential borrow will then be sequenced using the adjusted random number with the lowest number being the first priority for borrowing.

3. When stock is borrowed, NSCC will create miscellaneous activity updates to participant's CNS account to record the borrow. The number of shares borrowed will be journalized short against the participant's 9000 sub-account and long versus the participant's 6000 sub-account. A CNS short cover from the participant's 9000 sub-account will automatically occur against the shares on deposit in its DTC account, thus advancing the participant the market value of the stock. The long position in the participant's 6000 sub-account will reflect the shares borrowed by NSCC, and will be marked to the market daily.

4. Shares borrowed will be paid back and the participant charged back at current market prices, through normal allocation to the participant's 6000 sub-account. Borrows will be returned when regular short deliveries for a day exceed all priority needs and all regular fails of the same age or older.

5. In addition to the regular return of borrowed stock, the Stock Borrow Program will provide a priority close-out procedure where a participant requires the return of securities borrowed by NSCC in order to meet the "customer securities segregation" requirements of SEC Rule 15c3-3. In such instances, members will issue manual recall instructions to NSCC and put themselves on high allocation priority. If the borrow has not beet returned by the fifth day after the participant submits the recall instructions, the broker may intitiate buy-in procedures by submitting a Notice of Buy-In.

6. In lieu of utilizing the recall provisions of SEC Rule 15c3-3, the following procedure is available: If the lending participant, when notified at 8:00 a.m. the next day of what has been borrowed, finds that his "seg account" is now deficient due to a recalculation of the firm's requirement and the borrowing, the participant would notify NSCC. NSCC would convert the leading participant's right to receive back from NSCC securities borrowed, versus payment, represented by a long valued position, into a right to receive back from NSCC without payment, the securities borrowed, represented by a separate long free account. NSCC would also charge the participant's settlement account for the value of those securities in this separate long free account, thus reversing the credit which otherwise would have been extended.

[6.] *7.* The only fees to participants for this program will be normal short cover (when a borrow is made) and long allocation (when a borrow is returned) charges.

II. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to create an account which the Commission, under Commisison Rule 15c3-3(c), could deem to be a good control location. The long free account, as proposed, would not require the lending participant under the Stock Borrow Program, or a trustee appointed if the participant becomes impaired, to pay for securities, returned by the Corporation, thus in NSCC's view, eliminating the major substantive problem which today prevents control location status, a significant deterrent to more active usage by participants of the Corporation's Stock Borrow Program. The proposed rule change is designed to protect NSCC, insure the integrity of its systems and to insure the prompt and accurate settlement of securities as mandated by Congress in Section 17A(a)(1) of the Securities Exchange Act of 1934, as amended, by increasing utilization of the Automated Stock Borrow Program, therefore increasing the efficiency of the NSCC system, eliminating the long valued exposure to NSCC and increasing protection to customers. The proposed rule change will be implemented with the same diligence and care as to the safeguarding of securities and funds in NSCC's control or for which it is responsible as is now employed in the operation of the current Automated Stock Borrow Program.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change is concerned solely with the inter-relationship of NSCC and its members in the more efficient and increased use of the Automated Stock Borrow Program and therefore NSCC does not perceive any burden on competition being occasioned by this rule.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change have not been solicited and none have been 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) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be sumitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 10, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-24026 Filed 8-17-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22157; (70-6309)]

Northeast Utilities; Proposed Issuance and Sale of Common Stock Pursuant to a Dividend Reinvestment and Common Share Purchase Plan

August 13, 1981.

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Spingfield, Massachusetts 01089, a registered holding company, has filed with this Commission further post-effective amendments to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

Pursuant to prior orders of the Commission, Northeast has been authorized to issue and sell up to 8,200,000 of its authorized but unissued common shares, $5 par value, pursuant to its Dividend Reinvestment and Common Share Purchase Plan adopted in 1974, as amended and as to be further amended ("Plan"). As of July 6, 1981, Northeast had issued and sold 7,587,675 of its authorized common shares pursuant to the Plan. About 51,000 shareholders were members of the Plan on January 15, 1981.

Northeast now proposes to issue and sell, from time to time, the 612,325 shares remaining from the 8,200,000 shares previously authorized, plus a maximum of 9,800,000 additional authorized but unissued shares. The purchase price for share will be the average of the closing sales price for common shares as reported by the Wall Street Journal as composite transactions during the five trading days immediately preceding the investment date, which is generally the second business day of each month. It is stated that the 9,800,000 additional shares represent approximately 2 to 3 years' requirements, based on previous experience and estimates of increased participation.

The proceeds from the sale of the 7,587,675 common shares sold pursuant to the Plan on or before July 6, 1981, have been applied to the repayment of short-term borrowings incurred for the purpose of making capital contributions or advances to Northeast's subsidiaries, primarily for the purpose of financing the cost of the continuing construction program of the Northeast Utilities system. The proceeds from the sale of additional shares pursuant to the Plan (estimated at approximately $88,200,000, assuming all the shares are sold at a price of $9.00 per share) will be added to the general funds of Northeast and will be used for the following purposes: (a) loans or capital contributions to the company's subsidiaries, (b) repayment of short-term indebtedness of the company, or (c) general purposes of the company.

The declaration and the post-effective amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 14, 1981, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the isues of fact or law that are disputed. A person who so request will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 81-24006 Filed 8-17-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0313]

Orange Nassau Capital Corp.; Issuance of License to Operate as a Small Business Investment Company

On March 16, 1981, a notice was published in the **Federal Register** (46 FR 16999) stating that Orange Nassau Capital Corporation, 3 Center Plaza, Boston, Massachusetts 02108 had filed an Application with the Small Business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1981)), for a license to operate as a small business investment company.

Interested parties were given until the close of business on March 31, 1981, to submit written comments on the Application to the SBA.

Notice is hereby given that no written comments were received, and having considered the Application and all other pertinent informaton, the SBA approved the issuance of License No. 01/01-0313 on July 8, 1981, to Orange Nassau Capital Corporation, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: August 10, 1981.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 81-24027 Filed 8-17-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/433]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Panel on Bulk Cargoes under the SOLAS Subcommittee Working Group on Containers and Cargoes will conduct an open meeting at 10:00 a.m. on Wednesday, September 2, 1981 in Room 6200 of the Nassif Building, 7th and D Sts., Washington, D.C. 20590.

The purpose of the meeting will be to discuss the proposed amendments to Appendix B of the IMCO Code of Safe Practices for Bulk Cargoes, in particular the entries for Ammonium Nitrate Fertilizers, Coal, Grains, Ore Concentrate, Direct Reduced Iron (DRI), and Seed Cake.

For further information contact Mr. John F. McAnulty, USCG (G-MHM), Wash., D.C. 20593. Telephone (202) 426-1577 or Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, N.Y. 10048. Telephone (212) 432-1280.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

August 11, 1981.

[FR Doc. 81-24070 Filed 8-17-81; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/434]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Groups on Subdivision, Stability and Load Lines and Safety of Fishing Vessels of SOLAS will conduct an open meeting at 10 a.m. on September 10, 1981 in room 1303 of the Coast Guard Headquarters, 2100 2nd St., SW., Wash., D.C. 20593.

The purpose of the meeting will be a review of the agenda items and delegation papers received by that time in preparation for the 27th Session of the Subcommittee on Subdivision, Stability and Load Lines in February 1982.

In particular, the Working Group will discuss general US positions on:

1. Improvements in Load Line Convention;
2. Stability;
3. Subdivision;
4. Fishing Vessel Safety;
5. Tonnage Convention interpretation.

For further information contact Mr. William A. Cleary, Jr., US Coast Guard (G-MMT-5/TP12), 2100 2nd St., SW., Washington, D.C. 20593. Telephone (202) 426-4432.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

August 13, 1981.

[FR Doc. 81-24071 Filed 8-17-81; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/435]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea will conduct an open meeting to be held at 9:30 A.M. on Wednesday, September 16, 1981 in Room 3328 of the Nassif Building, Department of Transportation, 400 7th St., N.W., Washington, D.C.

The purpose of the meeting will be to discuss the following agenda items of the Fifteenth Session of the IMCO Subcommittee on Standards of Training and Watchkeeping tentatively scheduled for February 1982:

1. Matters relating to the 1978 STCW Convention;
2. Training and certification of crews of fishing vessels;
3. Training and qualifications of personnel on mobile offshore units;
4. Training and qualifications of officers and ratings in the handling of hazardous or noxious dry chemicals in bulk;
5. Certificates of competency;
6. Electrical officers or ratings;
7. Casualty statistics.

Further information may be obtained by contacting Captain R. A. Sutherland, USCG Headquarters (G-MVP/14), 2100 2nd St., S.W., Washington, D.C. 20593. Telephone (202) 426-1500.

The Chairman will entertain comments from the public as time permits.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

August 11, 1981.

[FR Doc. 81-24072 Filed 8-17-81; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/432]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 3, 1981 at 10:00 a.m. in Room 856, of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group will deal with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunicaitons questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international CCITT meetings. This meeting of Study Group A will examine the questions and contributions relating to upcoming meetings of CCITT Study Groups I, III and Mobile Maritime Service (SMM).

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Earl. S. Barbely, Chief, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

Dated: August 7, 1981.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 81-24036 Filed 8-17-81; 8:45 am]

BILLING CODE 7410-07-M

[Public Notice CM-8/431]

Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 2, 1981, at the office of the Chesapeake and Potomac Headquarters, 1710 H Street, N.W., on the 5th floor, Washington, D.C. The meeting will begin at 10:00 a.m.

Study Group CMTT deals with the specifications to be satisfied by telecommunication systems for transmission of radio and television programs over long distances. The main purpose of the meeting is to consider the documents submitted for the international meeting of Study Group CMTT in September/October, 1981.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: August 6, 1981.

Arthur L. Freeman,

Director, Office of International Communications Policy.

[FR Doc. 81-24035 Filed 8-17-81; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: A closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held September 16 and 17, 1981.

FOR FURTHER INFORMATION CONTACT: Tom Hartnett, TCEV, 1111 Constitution Avenue, NW, Room 5547, Washington, D.C., 20224, Telephone No. (202) 566–4246, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that a closed meeting of the Art Advisory Panel will be held on September 16 and 17, 1981, beginning at 10:00 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of market value appraisals of works of art involved in Federal Income, Estate, or Gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122)

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 81-23964 Filed 8-13-81; 9:38 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Schedule of Cost Reviews; Department of Veterans Benefits

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: Under OMB Circular A–76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government, the Veterans Administration will be conducting cost comparison reviews at various field stations within the Department of Veterans Benefits to determine the feasibility of contracting out specific tasks to private contractors. The following list of stations, functional areas of review, and schedule of review dates is published for the notification of all interested parties.

FOR FURTHER INFORMATION CONTACT: Robert A. Jones, Chief, Records Management and Supply Liaison Division, Department of Veterans Benefits (232B), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420, (202) 389–2972.

Dated: August 7, 1981.

Robert P. Nimmo,

Administrator.

Functional Area: Centralized Transcription Activities

Field station	Date of review
Albuquerque, NM	Dec. 15, 1981.
Atlanta, GA	May 31, 1982.
Baltimore, MD	Mar. 1, 1982.
Boise, ID	May 31, 1982.
Boston, MA	Aug. 31, 1982.
Buffalo, NY	May 31, 1982.
Chicago, IL	Mar. 1, 1982.
Cleveland, OH	May 31, 1982.
Columbia, SC	May 31, 1982.
Denver, CO	Mar. 1, 1982.
Des Moines, IA	Mar. 1, 1982.
Detroit, MI	Aug. 31, 1982.
Ft. Harrison, MT	Aug. 31, 1982.
Hartford, CT	Mar. 1, 1982.
Honolulu, HI	May 31, 1982.
Houston, TX	Dec. 15, 1981.
Huntington, WV	May 31, 1982.
Indianapolis, IN	Mar. 1, 1982.
Jackson, MS	May 31, 1982.
Lincoln, NE	Aug. 31, 1982.
Little Rock, AR	Aug. 31, 1982.
Los Angeles, CA	Mar. 1, 1982.

Functional Area: Centralized Transcription Activities—Continued

Field station	Date of review
Louisville, KY	May 31, 1982.
Manchester, NH	Dec. 15, 1981.
Milwaukee, WI	Aug. 31, 1982.
Montgomery, AL	Mar. 1, 1982.
Muskogee, OK	May 31, 1982.
Nashville, TN	Mar. 1, 1982.
Newark, NJ	Mar. 1, 1982.
New Orleans, LA	Mar. 1, 1982.
New York, NY	Mar. 1, 1982.
Philadelphia, PA	Aug. 31, 1982.
Phoenix, AZ	May 31, 1982.
Pittsburgh, PA	Mar. 1, 1982.
Portland, OR	Mar. 1, 1982.
Providence, RI	Aug. 31, 1982.
Reno, NV	Dec. 15, 1981.
Roanoke, VA	Mar. 1, 1982.
Salt Lake City, UT	Aug. 31, 1982.
San Diego, CA	May 31, 1982.
San Francisco, CA	Aug. 31, 1982.
San Juan, PR	Aug. 31, 1982.
Seattle, WA	Dec. 15, 1981.
Sioux Falls, SD	May 31, 1982.
St. Louis, MO	Aug. 31, 1982.
St. Paul, MN	May 31, 1982.
St. Petersburg, FL	May 31, 1982.
Togus, ME	Dec. 15, 1981.
Waco, TX	May 31, 1982.
Washington, DC	Aug. 31, 1982.
Wichita, KS	May 31, 1982.
Winston-Salem, NC	Mar. 1, 1982.

Functional Area: Automated Mail Inserting

Field station	Date of review
Los Angeles, CA	Dec. 15, 1981.
Milwaukee, WI	May 31, 1982.
Philadelphia, PA	Dec. 15, 1981.
St. Paul, MN	Dec. 15, 1981.

Functional Area: Keypunch

Field station	Date of review
Cleveland, OH	Dec. 15, 1981.
Milwaukee, WI	Dec. 15, 1981.
Montgomery, AL	Dec. 15, 1981.
Nashville, TN	Dec. 15, 1981.
New Orleans, LA	Dec. 15, 1981.
New York, NY	Dec. 15, 1981.
San Juan, PR	Dec. 15, 1981.
St. Petersburg, FL	Dec. 15, 1981.
White River Junction, VT	Dec. 15, 1981.

Functional Area: Microfilming

Field station	Date of review
Cleveland, OH	Mar. 1, 1982.
Milwaukee, WI	Mar. 1, 1982.
Philadelphia, PA	Mar. 1, 1982.
St. Paul, MN	Mar. 1, 1982.

[FR Doc. 81-23999 Filed 8-17-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 159
Tuesday, August 18, 1981

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).

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1

CIVIL AERONAUTICS BOARD.

[M-326 Amdt. 3, August 12, 1981]

Notice of Addition of Item to the August 13, 1981 Board Meeting

TIME AND DATE: 9:30 a.m., August 13, 1981.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: *Addition:* 2a. Dockets 35084, 39715, 39722, 39872; Emergency Air Transportation Requirements resulting from the air traffic controllers' service disruption. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

Craig Lindsay,
Certifying Officer, Civil Aeronautics Board.

[S 1256-81 Filed 8-13-81; 4:17 pm]
BILLING CODE 6320-01-M

2

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL" CITATION OF PREVIOUS ANNOUNCEMENT: vol. 46, FR 40972, Thursday, August 13, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Friday, August 21, 1981.

PLACE: 1700 G Street, N.W., board room, 6th floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Friday, August 21, 1981.

Holding Company Acquisition of—California Women's Savings and Loan Association, Los Angeles, California By First Westwood Corporation Los Angeles, California.

No. 531, August 14, 1981.

[S 1260-81 Filed 8-14-81; 12:46 pm]
BILLING CODE 6720-01-M

3

FEDERAL RESERVE SYSTEM:

Board of Governors.

TIME AND DATE: 10 a.m., Monday, August 24, 1981.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Proposed acquisition of real property by Federal Reserve Bank.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: August 14, 1981.

William W. Wiles,
Secretary of the Board.

[S-1264-81 Filed 8-14-81; 3:54 pm]
BILLING CODE 6210-01-M

4

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION.

TIME AND DATE: 10 a.m. Monday, September 14, 1981.

PLACE: Board Room, 712 Jackson Place, NW., Washington, D.C. 20006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Call to Order. Check Quorum.
2. Adoption of Proposed Agenda.
3. Approval of Minutes of April 13, 1981 meeting.
4. Report of the Chairman:

a. Remarks on Annual Report, FY ending September 30, 1981.
b. Discussion of ETS.
c. Status of Awards Ceremony and Speaker, Sunday, May 9, 1982 at Harry S. Truman Library, Independence, Missouri.
d. Discussion of 100th Anniversary of President Truman's Birth, May 8, 1984.
e. Discussion of proposed date of next Board meeting, Monday, April 5, 1982 at 10:00 a.m. at the Foundation.
f. Resolution to empower the Chairman or President to renew service contracts and conclude other Foundation business.

5. Report of the President:

a. Status of Harry S. Truman Memorial Trust Fund.
b. Discussion of current $5,000 maximum.
c. Discussion of current number of Scholars (53 State Scholars plus 26 Scholars at Large).

6. Report of the Executive Secretary:

a. Current status of Truman Scholars.
b. Selecting the Class of 1982.
c. Report on work-experience program.
d. Foundation operations.

7. New Business.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary; Telephone (202) 395-4831.

[S-1261-81 Filed 8-14-81; 2:32 pm]
BILLING CODE 6115-02-M

5

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 40630, August 10, 1981 and August 13, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3 p.m., Tuesday, August 18, 1981.

CHANGES IN THE MEETING: Emergency notice of cancellation of the meeting scheduled for Tuesday, August 18, 1981.

By action jacket SE-81-05, approved August 13, 1981, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted to cancel the meeting originally scheduled for Tuesday, August 18, 1981, due to postponement of consideration of agenda item No. 4(a) [Press lines (Docket No. 751)].

Commissioners Alberger, Calhoun, Bedell, and Stern determined by recorded vote that Commission business requires the change in scheduling and affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1256–81 Filed 8–13–81; 5:00 pm]

BILLING CODE 7020–02–M

6

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Tuesday, September 1, 1981.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Press lines (Docket No. 751).
5. Investigation TA–203–8 (High-Carbon Ferrochromium)—briefing and vote.
6. Investigation 731–TA–48 [Preliminary] (Certain Amplifier Assemblies and Parts Thereof from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1263–81 Filed 8–14–81; 3:33 pm]

BILLING CODE 7020–02–M

7

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Monday, August 24, 1981.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th Street and Constitution Avenue, NW, Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: FY 1983 Budget.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Director, Office of Communications; Telephone: (202) 275–7252.

[S–1262–81 Filed 8–14–81; 2:43 pm]

BILLING CODE 7035–01–M

8

NATIONAL RAILROAD PASSENGER CORPORATION.

Board of Directors Meeting

In Accordance with Rule 4(a) of Appendix A of the Bylaws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on August 26, 1981.

A. The meeting will be held on Wednesday, August 26, 1981, in "Ballroom B", lobby level, Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, D.C., beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 4, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation—Meeting of the Board of Directors—August 26, 1981

(9:30) Closed Session

1. *Internal Personnel Matters*
2. *Litigation Matters*
3. *Discussion of Northeast Corridor Communications System*

(10:30) Open Session

4. *Approval of Minutes of Regular Meeting of July 29, 1981*
5. *Authorization for Fiber Optics Feasibility Study*
6. *Commitment Approval Requests*
   75–117–S2 Supplemental Funding for CAR No. 75–117: Purchase of Superliner Cars
   81–102 Retirement and Sale of One Hundred Seventy (170) Passenger Cars
   81–100 Copying Equipment—Headquarters
7. *Appointment of ad hoc Nominating Committee*
8. *Break Even Concept*
9. *Route Structure*
10. *Board Committee Reports*
    Equipment
    Finance
    Legal Affairs
    Northeast Corridor Improvement Project
11. *President's Report*
12. *New Business*
13. *Adjournment*

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Corporate Secretary at (202) 383–3754.

August 14, 1981.

Sandra Spence,

Corporate Secretary.

[S–1257–81 Filed 8–14–81; 10:06 am]

BILLING CODE 0000–00–M

9

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, August 25, 1981.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Investigation Report:* Flight Service Station Weather Briefing Inadequacies and *Recommendations* to the Federal Aviation Administration.
2. *Safety Report:* Aircraft-Icing—Weather Parameters, Forecasting, and Aircraft Certification and Recommendations to the Federal Coordinator for Meteorological Services and Supporting Research, and the Federal Aviation Administration.
3. *Letter* to the Federal Aviation Administration regarding Recommendations A–81–10 and –11.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–382–6525.

August 14, 1981.

[S–1258–81 Filed 8–14–81; 11:41 am]

BILLING CODE 4910–58–M

10

NUCLEAR REGULATORY COMMISSION.

DATE: Week of August 17, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: *Tuesday, August 18:*

2:00 p.m.:
1. Discussion of Issuance of Order in TMI–1 Restart Proceeding (closed meeting) (continued from August 13)

Wednesday, August 19:

10:00 a.m.:
1. Briefing on Enforcement Actions (closed meeting)

Thursday, August 20:

10:00 a.m.:
1. Discussion of Contested Issues for Diablo Canyon Low-Power Operating License (closed meeting) (rescheduled from August 10)

2:00 p.m.:
1. Affirmation/Discussion Session (Approximately 30 minutes, public meeting)

Items to be affirmed and/or discussed:
a. revisions in Draft Bailly Show Cause Order
b. Policy on Proceeding With Pending Construction Permit and Manufacturing License Applications
c. Review of Director's Denial (In the Matter of Commonwealth Edison Company)
d. Advance Notice of Proposed Rulemaking to Reform Material Control and Accounting Regulation of Fuel Fabrication Facilities Involving Formula Quantities of Strategic Special Nuclear Material
e. Protection of Unclassified Safeguards Material

2:30 p.m.:
2. Briefing on Generic Issue of Safety Relief Valves (public meeting)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[S-81-1254-81 Filed 8-13-81; 4:16 pm]

BILLING CODE 7590-01-M

11

OVERSEAS PRIVATE INVESTMENT CORPORATION.

Meeting of the Board of Directors

TIME AND DATE: Meeting of the OPIC Board of Directors: Tuesday, August 25, 1981 at 9:00 a.m. (Closed Portion); 10:00 a.m. (Open Portion).

PLACE: Offices of the Corporation. Seventh (7th) Floor Board Room; 1129 20th Street N.W., Washington, D.C.

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the Public; 9:00 to 10:00 a.m.):

1. 1981 Legislative Renewal.
2. Finance Project in African Country.
3. Insurance Project in Middle East Country.
4. Insurance Project in Middle East Country.
5. Claims Report.
6. Information Report: Insurance Project in Caribbean Country.
7. Information Reports: General.
8. Information Report: Country Concentration.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public; 10:00 a.m.):

1. Approval of the Minutes of the Previous Board Meeting.
2. Confirmation of Scheduled Board Meetings.
3. OPIC Budget for FY 1983; and Amended for FY 1982.
4. Allocation of Reserves.
5. Financial Statements.
6. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653–2949.

August 14, 1981.

Elizabeth A. Burton,

Corporate Secretary.

[S-1259-81 Filed 8-14-81; 12:50 pm]

BILLING CODE 3210-01-M

12

POSTAL RATE COMMISSION.

TIME AND DATE: 11 a.m., Friday, August 14, 1981.

PLACE: Conference Room, Room 500, 2000 L Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Consideration upon certification to the Commission of Presiding Officer's Order in Docket MC81–3.

Reconsidered order on Postal Service motion for waiver of filing requirements in Docket MC81–3.

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, Telephone (202) 254–5614.

[S-1255-81 Filed 8-13-81; 4:16 pm]

BILLING CODE 7715-01-M

13

TENNESSEE VALLEY AUTHORITY.

[Meeting No. 1272]

TIME AND DATE: 7 p.m. (cdt), Thursday, August 20, 1981.

PLACE: City Administration Building Auditorium, 232 West Gaines, Lawrenceburg, Tennessee.

STATUS: Open.

Action Items

A—Project Authorizations

1. Project Authorization No. 3515.1—Amendment to project authorization for construction of a facility to demonstrate production of an ammonium polyphosphate suspension fertilizer.
2. Project Authorization No. 3577—Replacement of annunciation systems at selected hydro plants.
3. Project Authorization No. 3578—Construction of the Murphy Hill, Alabama, 500-kV Substation and transmission line connections.

B—Purchase Awards

1. Req. No. 828929—Reactor Building Environmental Control System Air Handling Units for Yellow Creek Nuclear Plant.
2. Req. No. 622887—Labor, equipment, and materials to construct office and laboratory—Western Area Radiological Laboratory at Muscle Shoals reservation.

C—Power Items

1. Deed and Bill of Sale conveying to the city of Amory, Mississippi, TVA's Amory District Substation.
2. Lease and amendatory agreement with Starkville, Mississippi, covering arrangements for consoildated 46-kV service at TVA's Southwest Starkville Substation.

D—Personnel Items

*Supplement to personal services contract with TRW Inc., Redondo Beach, California, for performance of an environmental test program of the Koppers-Totzek Gasification Process at the Nitrogen Fertilizer Industries, S.A., Gasification Facility in Ptolemais, Greece.

2. Renewal of personal services contract with Teledyne Engineering Services, Waltham, Massachusetts, for piping analyses and related services for TVA nuclear plants, requested by the Office of Engineering Design and Construction.

E—Real Property Transactions

1. Filing of condemnation suit.

F—Unclassified

1. Memorandum of Understanding between the State of Tennessee and TVA for recognition of TVA as a water quality management agency as defined under the Clean Water Act.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to request for information about this meeting. Call (615) 632–3247, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: August 13, 1981.

[S-1252-81 Filed 8-13-81; 4:13 pm]

BILLING CODE 8120-01-M

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* Item approved by individual Board members. This would give formal ratification to Board's action.

federal register

Tuesday,
August 18, 1981

Part II

Securities and Exchange Commission

Integrated Disclosure System

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release Nos. 33-6331; 34-18007; IC-11888; File No. S7-893]

Reproposal of Comprehensive Revision to System for Registration of Securities Offerings.

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is republishing for public comment three proposed forms to be used to register offerings of securities under the Securities Act of 1933. The three proposed forms would constitute the basic framework for registration statements under the Securities Act, with different levels of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities. Republication of these and related proposals is intended to afford the public an opportunity to consider in a comprehensive manner the various elements of the Commission's integrated disclosure system. This action is a significant part of the Commission's program to integrate the disclosure systems under the various Federal securities laws and to simplify and improve the disclosure requirements imposed under these systems.

DATE: Comments should be submitted on or before October 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-893. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William H. Carter or Catherine Collins McCoy, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is reproposing for comment three new registration statement forms to be used to register offerings of securities under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq.). These three new forms, which are denominated Forms S-1, S-2 and S-3,[1] would replace the most widely used registration statement forms and would constitute the basic framework for Securities Act registration.[2]

I. The Integrated Disclosure System

New Securities Act registration forms, designated Forms A, B and C, previously were proposed on September 2, 1980.[3] As discussed more fully below, these earlier forms have undergone substantial revisions, both as the result of commentators' suggestions[4] and further study by the Commission. Accordingly, proposed new Forms S-1, S-2 and S-3 are the culmination of the Commission's efforts to adopt three basic registration forms which implement its comprehensive integration program and improve and simplify disclosure requirements where possible.

The concept of integrating the various disclosure systems under the Federal securities laws has been the subject of theoretical discussion for quite some time.[5] It was long been clear that the transaction-oriented framework of the Securities Act and the disclosure system which has developed thereunder often overlap with, and produce disclosure duplicative of, that prepared independently in response to the status oriented framework of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.) and the continuous disclosure system operating thereunder.

The Commission's integration program involves a comprehensive evaluation of the disclosure policies and procedures underlying the Securities Act and the Exchange Act with a view toward integrating the information systems under those Acts so that investors and the market place are provided meaningful, nonduplicative information both periodically and when securities distributions are made to the public, while the costs of compliance for public companies are decreased. In addition, this program utilizes the concept of encouraging registrants, on a voluntary basis, to combine their formal Commission filings with their informal corporate reports to security holders and to the public.

The crucial task in developing an integrated disclosure system is to determine the answers to two fundamental questions:

(1) What information is necessary for decision-making both in the context of the distribution of securities and in the context of the trading markets? and

(2) Under what circumstances and in what form should such information be disseminated to shareholders, investors and the market place?

The need to identify what information is material to investment and voting decisions is a continuing one in the field of securities regulation. As mentioned above, integration, as a concept, involves a conclusion as to equivalency between transactional [Securities Act] and periodic [Exchange Act] reporting. If a subject matter constitutes material information (other than a description of the transaction itself), then generally it will be material both in the distribution of securities and to the trading markets.

Moreover, requirements governing the description of such subject matter should be the same for both purposes. As an example, if a management's discussion of the financial statements is important for transactions involving distributions, then it would be equally important for an informed trading market. Thus, both prospectuses and periodic reports should include this information, and requirements for its content should be essentially the same. This principle of equivalency has led to the development and expansion of Regulation S-K, discussed more fully below, a technical device designed to consolidate in one regulation uniform disclosure requirements utilized by both Securities Act and Exchange Act forms. It also has led to improving the quality of reports under the Exchange Act, a

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[1] These three forms replace those originally proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693], hereinafter referred to as the "ABC Release", as proposed Forms A, B and C. Form S-1 replaces Form C and serves the same function as existing Form S-1 (17 CFR 239.11), *i.e.*, it is the form used for Securities Act registration where no other form is authorized or prescribed. Form S-2 replaces the Form B as proposed in September of 1980 and is the "middle tier" form, roughly comparable to existing Form S-7 (17 CFR 239.26). Finally, Form S-3 replaces the Form A proposed in the ABC Release and is analogous to existing Form S-16 (17 CFR 239.27).

[2] If proposed Forms S-1, S-2 and S-3 are adopted by the Commission the existing Forms S-1 and S-2 would be replaced and existing Forms S-7 and S-16 would be rescinded. At this time there is no Form S-3, the previous Form S-3 having been rescinded effective April 27, 1981 (Securities Act Release No. 6299 [March 18, 1981] [46 FR 18947]).

[3] *See* ABC Release. A copy of the summary of the comments to this release, which summary was prepared by the staff of the Commission, has been placed in File No. S7-849 and is available for inspection and copying [hereinafter "Summary of Comment"].

[4] A total of 114 commentators submitted one or more letters of comment on Forms A, B, and C. While cost considerations preclude a comprehensive discussion of these letters, the explanations of elements of the new Forms S-1, S-2 and S-3 which appear below, particularly those which constitute changes from Forms A, B and C, often refer to commentators' suggestions.

[5] *See, e.g.*, Cohen, "Truth in Securities Revisited," 79 Harv. L. Rev. 1340 (1966).

trend that started in 1970 when Form 10 was amended.[6]

Integration consists, however, of more than the concept of equivalency of reportable material information under both Acts. It also involves answers to the second question posed above: under what circumstances and in what form should this information be disseminated to shareholders, investors and the marketplace? Equivalency alone might suggest that all the information contained, for example, in a Form 10–K should also be reiterated in all prospectuses. However, integration also in predicated on the fact that information regularly is being furnished to the market, in part, through periodic reports under the Exchange Act. This information is evaluated by professional analysts and other sophisticated users, is available to the financial press and is obtainable by any other person who seeks it for free or at nominal cost. To the extent that the market uses this information, and it is adequately reflected in the price of a registrant's outstanding securities, there seems to be little need to reiterate this information in a prospectus in the context of a distribution. The fact of market availability of information for sophisticated users also allows the exploration of other values in addition to cost reductions afforded through non-duplication, including readability and effective communication in specific contexts.[7]

These proposals should be considered together with the other elements of the Commission's integration program, some of which were adopted previously and some of which are being proposed (or reproposed) today. Of the earlier rulemaking actions the following are particularly relevant: (1) the adoption of amendments to Form 10–K (17 CFR 249.310), Regulation S–K (17 CFR 229), and Rule 14a-3 (17 CFR 240.14a-3) relating to the annual report to security holders,[8] amendments which reduce duplicative disclosure and facilitate the integration of the disclosure systems under the Securities Act and Exchange Act, as well as the "formal" and "informal" disclosure systems;[9] (2) the adoption of amendments to Reguation S–X (17 CFR 210) to establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act;[10] (3) the adoption of amendments to Regulation S–X to eliminate, to the extent possible, the differences between the requirements of that Regulation and the requirements of generally accepted accounting principles ["GAAP"] in order to facilitate integration of the "formal" and "informal" disclosure systems;[11] (4) the adoption of amendments to Form 10–Q (17 CFR 249.308a) to make quarterly reporting on this Form both complement and update annual reporting on Form 10–K;[12] and (5) the adoption of Form S–15 (17 CFR 239.29), an experimental simplified form for the registration of securities issued in certain types of business combinations which utilizes the concept of multiple document delivery.[13]

Seven other major proposals or reproposals are being published today. First is the reproposal of the Regulation S–K amendments originally published for comment last December based on a sunset review of the Guides for the Preparation and Filing of Registration Statements and Reports under the Securities Act and the Exchange Act ("Guides").[14] As proposed today, Regulation S–K would be the repository of uniform content requirements relating to substantially all of the information to be set forth in registration statements and annual and other periodic reports required pursuant to the Securities Act and the Exchange Act. This comprehensive proposal, together with proposed new Forms S–1, S–2 and S–3, revises the system of registration under the Securities Act, integrating it to the fullest extent possible with the Exchange Act system and with informal corporate communications. The proposal is designed to improve the organization and rationality of Regulation S–K by classifying the items by subject matter. As reproposed, the Regulation would be subdivided into the following nine classifications: (1) General; (2) Business; (3) Securities of the Registrant; (4) Financial Information; (5) Management and Certain Security Holders; (6) Registration and Prospectus Provisions; (7) Exhibits; (8) Miscellaneous; and (9) List of Industry Guides. The existing items of Regulation S–K would be renumbered and relocated, with minimal change, according to subject matter. In addition, the Regulation would be expanded significantly. Certain disclosure requirements now located in the Guides would be added to it, as would certain provisions currently contained in Regulation C (17 CFR 230.400 through 230.494), and the Guides, other than those relating to specific industries, would be rescinded. Also added to Regulation S–K would be certain disclosure items which are now common to various Securities Act registration forms and Exchange Act forms and which would no longer have to be repeated in each form.

Second is the proposal of amendments to Regulation C, commencing the Commission's "sunset" review of this Regulation.[15] In general, this proposal would rescind certain rules which are outmoded, revise other rules to clarify them or increase their utility, delete rules which are being transferred to Regulation S–K and add new rules and definitions where needed, such as by consolidating, in one regulation, definitions which currently are scattered throughout various Securities Act registration forms.

Third is a reproposal of a new rule designed to clarify and expand the availability of delayed or continuous offerings ("shelf" offerings) of securities under the Securities Act.[16]

Fourth is a proposed Securities Act rule designed to provide guidance to underwriters and others as to what

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[6] Securities Exchange Act Release No. 8996 (October 14, 1970) [35 FR 16537]. These revisions were proposed in Securities Exchange Act Release No. 8661 (September 15, 1969) [34 FR 14236] in response to recommendations of the "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969).

[7] For a more comprehensive discussion of the integration program, including its legislative and administrative background and the characteristics of the securities markets and the technology of information dissemination which were considered in shaping the proposals, *see* ABC Release.

[8] Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630], (hereinafter referred to as the "10–K Release").

[9] The new Form 10–K purposely was structured to facilitate integration with the annual report to security holders. This purpose apparently is being fulfilled. A recent informal survey conducted by the Commission staff indicates that in the first four months of its use: 38.9% of the registrants surveyed incorporated all or part of their annual report description of business into their Form 10–K; 14.0% incorporated all or part of their description of property; and 73.0% incorporated all of part of their financial statements (these particular figures are based on a sample of 777 registrants).

[10] Securities Act Release No. 6234 (September 2, 1980) [45 FR 63662].

[11] Securities Act Release No. 6233 (September 2, 1980) [45 FR 63660].

[12] Securities Act Release No. 6288 (September 9, 1961) [45 FR 12480].

[13] Securities Act Release No. 6232 (September 2, 1980) [45 FR 63647], hereinafter referred to as the "S–15 Release."

[14] This reproposal, hereinafter referred to as the "Regulation S–K Release," is being made in Securities Act Release No. 6332 (August 6, 1961). Its predecessor release, hereinafter referred to as the "Guides Release," was Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].

[15] Securities Act Release No. 6333 (August 6, 19181), hereinafter referred to as the "Regulation C Release."

[16] Securities Act Release No. 6334 (August 6, 1981), hereinafter referred to as the "Shelf Registration Release." Comments were previously solicited on such a rule in the Guides Release.

constitutes a "reasonable investigation" and a "reasonable ground for belief" under Section 11(b) of the Securities Act.[17] In addition, this release reproposes certain provisions regarding the effective date of information incorporated by reference in a registration statement and the treatment of modified or superseded statements, which address the concerns of underwriters over potential Section 11 liability for a registrant's Exchange Act filings which they had not helped to prepare but which are incorporated by reference into a registration statement.[18]

The fifth proposal involves a policy statement and rulemaking proposal concerning disclosure of security ratings for debt securities, convertible debt and preferred stock in registration statements and reports.[19] The Commission believes this proposal is particularly relevant since proposed Form S–3 utilizes, as one of its eligibility criteria, the security ratings of the debt being offered.

The sixth release proposes amendments to a number of rules, forms, and schedules under the Exchange Act.[20] These proposed amendments would include amendments to Form 8–K (17 CFR 240.308) to improve the reporting of current information under the Exchange Act, an essential element in the integrated disclosure system. In addition, the release contains other proposed amendments which make necessary changes to conform schedules, rules and forms to the additional changes being proposed today, primarily those proposed in the Regulation S–K Release. The release also includes proposed amendments to the safe harbor rules for projections under the various securities acts and proposes the rescission of several rarely used forms.

The seventh proposal involves amendments to conform existing Securities Act forms to the changes being proposed in the Regulation S–K Release[21] and in this release. In addition, it proposes the rescission of several rarely used forms.

II. Overview

Under the proposed registration statement framework, registrants would be classified into three categories: (1) companies which are widely followed by professional analysts; (2) companies which have been subject to the periodic reporting system of the Exchange Act for three or more years, but which are not widely followed; and (3) companies which have been in the Exchange Act reporting system for less than three years. The first category would be eligible to use proposed Form S–3, which relies on incorporation by reference of Exchange Act reports and contains minimal disclosure in the prospectus. This form is predicated on the Commission's belief that the market operates efficiently for these companies, *i.e.*, that the disclosure in Exchange Act reports and other communications by the registrant, such as press releases, has already been disseminated and accounted for by the market place. The second category would be eligible for Form S–2, which represents a combination of incorporation by reference of Exchange Act reports and presentation in the prospectus or in an annual report to security holders of certain information. The third category would use Form S–1, which requires complete disclosure of information in the prospectus and does not permit incorporation by reference. As with the present system, a company eligible to use Form S–3 could also use either of the other forms and a Form S–2 company could also use Form S–1 and, for certain offerings, Form S–3. While the eligibility criteria for each category are based on the proposals and specific inquiries in the ABC Release, they would represent a distinct departure from both the proposals and the present system.

Currently, the availability of Form S–7 or Form S–16 is predicated on a combination of factors, relating to Exchange Act status and experience, economic indicia and market criteria. The conditions for use of Form S–7 include the registrant's status under the Exchange Act, minimum periods of being subject to the reporting provisions of that Act and having filed the required reports in a timely manner, the transmittal of an annual report to security holders in certain situations, the absence of specified defaults over a thirty-six month period and a minimum net income of $250,000 for three of the last four fiscal years, including the most recent fiscal year.[22] To use Form S–16 in a primary offering for cash, a registrant, in addition to complying with the conditions of Form S–7, is required, among other things, to have a minimum value of voting stock held by non-affiliates (hereinafter referred to as "float") of $50 million.[23] In contrast, the proposed framework markedly reduces or eliminates those criteria relating to the "quality" of the registrant, and premises eligibility generally on dissemination of information in the market place, as represented by the length and nature of compliance by the company with the reporting requirements of the Exchange Act, and, with respect to proposed Form S–3, on the registrant's float.[24]

The Commission believes that the standards of Exchange Act experience and float are more appropriate than the quality of the registrant in determining the type and amount of disclosure which is set forth in the prospectus delivered to investors. In the Commission's view, the "quality" of the registrant indicia, such as net income, are more appropriately disclosure matters, rather than criteria for eligibility to use a form. Thus, the eligibility criteria are designed to recognize the realities of the marketplace by matching a registrant to the form which will furnish investors with the appropriate disclosure for delivery in the prospectus.

Proposed Form S–3 recognizes the applicability of the efficient market theory to the registration statement framework with respect to those registrants which usually provide high quality corporate reports, including Exchange Act reports, and whose corporate information is broadly disseminated, because such companies are widely followed by professional analysts and investors in the market place. Because these registrants are widely followed, the disclosure set forth in the prospectus may appropriately be limited, without the loss of investor

[17] Securities Act Release No. 6335 (August 6, 1981), hereinafter referred to as the "Section 11 Release."

[18] These provisions were originally proposed as amendments to Form S–16 (they were proposed again in the ABC Release) and would: (1) deem the effective date of documents incorporated by reference into registration statements on that Form to be the date of the document's initial filing with the Commission; (2) deem a statement in a document incorporated by reference into the registration statement on that Form not to be part of the registration statement if the statement has been modified or superseded in the registration statement or in subsequently filed documents which are incorporated by reference into a registration statement on that Form; and (3) provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws. Securities Act Release No. 5923 (April 11, 1978) [43 FR 16677], hereinafter referred to as the "S–16 Release."

[19] Securities Act Release No. 6336 (August 6, 1981), hereinafter referred to as the "Security Rating Release." A concept release on this subject was published in Securities Act Release No. 5882 (November 3, 1977) [45 FR 58414].

[20] Securities Act Release No. 6338 (August 6, 1981), hereinafter referred to as the "Exchange Act Coordinating Release."

[21] Securities Act Release No. 6337 (August 6, 1981), hereinafter referred to as the "Securities Act Coordinating Release."

[22] General Instruction A to Form S–7.

[23] General Instruction A to Form S–16.

[24] A further classification is made under the eligibility requirements of proposed Form S–3, utilizing factors relating to the securities being offered and the offerees involved.

protection, to information concerning the offering and material facts which have not been disclosed previously. The abbreviated disclosure is made possible by the use of incorporation by reference of the registrant's Exchange Act information into the prospectus. Because of the abbreviated disclosure, the utility of proposed Form S–3 is limited to widely followed companies. Based on the comments to the ABC Release, consultations with the investment community discussed below and the Commission's experience, the number of widely followed companies is not large and is much smaller than the number of companies currently eligible to use Form S–16. Since the length of reporting experience under the Exchange Act does not ensure widespread market following, a different criterion for Form S–3 eligibility is necessary. The proposed float requirement is designed to correlate the use of abbreviated Form S–3 to widely followed registrants.

As proposed, fewer companies would be able to meet the float requirement for primary offerings on Form S–3 than currently are eligible to use Form S–16. The Commission believes, however, that the contraction in the use of Form S–3 will not disadvantage companies which formerly were able to use Form S–16. These companies will be able to use Form S–2, which will be available to any company which has been in the reporting system for three years. A liberalization of current Form S–7, proposed Form S–2 is designed for improved readability by streamlining disclosure requirements and allowing certain disclosure obligations to be satisfied either through the delivery of the annual report to security holders or by presentation of comparable updated information in the prospectus. More specifically, the financial statements, management's discussion and analysis and the brief business description required by proposed Form S–2 are identical to those already presented in the annual report to security holders. Moreover, it is contemplated that the processing time under the Commission's selective review system will be comparable for both Form S–2 and Form S–3.[25] Additionally, Form S–3 will be available to any Form S–2 registrant for offerings of debt securities which have received one of the four highest ratings by a nationally recognized statistical rating organization and for the registration of securities under dividend and interest reinvestment plans and rights offerings, conversions and warrants.

Therefore, the Commission believes that the restriction of proposed Form S–3 to widely followed registrants is appropriate, especially with respect to equity offerings, and that in light of the streamlined nature of the disclosure in proposed Form S–2, the availability of proposed Form S–3 for certain offerings by eligible issuers and the anticipated comparability of review time for both forms, companies currently eligible to use Form S–16 will not be subject to substantially different burdens under the proposed registration statement framework.

Finally, proposed Form S–1, like its predecessor, would be used to register securities when no other form is authorized or prescribed and would be used by companies in the Exchange Act reporting system for less than three years, such as new issuers. To ensure that adequate information concerning these registrants is readily available to investors, proposed Form S–1 requires delivery of a more lengthy and comprehensive prospectus than either proposed Form S–2 or Form S–3. While the proposed form represents a streamlined version of current Form S–1, the Commission believes that full presentation of disclosure in the prospectus without the use of incorporation by reference is necessary and appropriate in such offerings.

III. Synopsis

The following discussion of the proposed forms is included in order to assist all interested persons in their understanding of the proposed registration system under the Securities Act published herein. However, attention is directed to the text of the proposed forms for a more complete understanding.

A. Eligibility Rules for Use of Forms S–3, S–2 and S–1

The most significant changes made in proposed Forms S–3, S–2 and S–1, as compared to proposed Forms A, B and C, is in the various eligibility requirements of Forms S–3 and S–2 (Forms A and B). This aspect of Form S–1 (Form C) is virtually unchanged. Eligibility requirements also were addressed by more of the commentators than any other aspect of the ABC Release.

Proposed Forms A and B had eligibility requirements relating to such diverse factors as Exchange Act filing requirements, defaults, net income, "float", number of debt/equity security holders, earnings, income declines, "subject to" accountant's opinions, and downgrading of bond ratings. Most commentators, however, objected to what they perceived as certain theoretical inconsistencies in these requirements. For example, certain eligibility requirements of Form A were viewed as being based upon an efficient market theory of information dissemination, such as the Exchange Act report requirements and the "float" requirements, while others, such as the net income requirements and the non-default requirements, were viewed as "quality of issuer" requirements having little or nothing to do with an efficient market. The same type of inconsistency was seen in the "downgraded bond rating" condition in proposed Form B, which was clearly meant to be a "quality of issuer" test and, according to many commentators, was not an appropriate criterion. As a consequence, in drafting proposed Forms S–3 and S–2, the Commission has made a concerted effort to revise the eligibility requirements in a manner that is simple and rational and is consistent with its intention to classify registrants on the basis of the degree of information disseminated and analyzed in the marketplace.

1. *Form S–3.* The eligibility requirements for use of Form S–3 are broken down into two classifications, "Registrant Requirements" and "Transaction Requirements." A registrant first must meet the Registrant Requirements (which are identical for Forms S–3 and S–2) and then must meet at least one of the Transaction Requirements before it can use Form S–3.

a. *Registrant Requirements.* The first three Registrant Requirements are quite similar to those proposed in Form A and in existing Form S–7. The first requires that the registrant be organized under the laws of the United States, its various states or territories, and have its principal business operations located there. The second requires that the registrant have a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act or be required to file reports pursuant to Section 15(d) of that Act. The third requires that the registrant have filed all the information required by Sections 13, 14 or 15(d) of the Exchange Act for at least 36 months and have been timely in such filings for the preceding 12 months. These requirements are necessary because the operation of an efficient market for a

[25] Under the Commission's selective review system primary emphasis is placed on periodic reports filed under the Exchange Act. *See* SEC News Digest (November 17, 1980). Currently, a "full review" of a Form S–7 takes approximately the same time as that for a Form S–16 since in both cases all the filings in both registration statements, which represent the same amount of disclosure requirements, are reviewed. Similarly, the time required for a "no review" of a Form S–7 is comparable to that for a Form S–16.

security depends on such information being made public promptly and its inclusion in filings made under the Exchange Act helps ensure its accuracy. One change from the Form S-7 format should be noted, namely, the requirement that a "Section 15(d) company" send its security holders a report complying with Exchange Act Rule 14a3(b). This requirement seemed too broad and was deleted.[26] The distribution of such a report to existing common shareholders, for example, would not appear to add much to the quantum of information in the market place when a primary offering of common stock is being made. Conversely, however, the distribution of such a report to existing common shareholders could be quite helpful in a rights offering of common stock. Acordingly, while the broad requirement to disseminate such reports was deleted, a narrower and more appropriate application was adopted for all registrants making rights offerings, or having outstanding warrants, convertible securities or dividend or interest reinvestment plans (See Transaction Requirements below).

The fourth Registrant Requirement extensively revises existing "default criteria" by disqualifying only those registrants with material defaults that occurred since the filing of the last Exchange Act report containing certified financial statements. This change is believed to be more consistent with the concept that Form S-3 should be available to those registrants about whom information is broadly disseminated, i.e., widely followed registrants whose defaults are common knowledge should not be barred from using a short form just because a default has occurred. The new requirement that disclosure of the default must have undergone the scrutiny of at least one audit is believed sufficient to ensure its adequate dissemination. In addition, the default criteria also were revised in an effort to clarify the applicable materiality standards.

The fifth Registrant Requirement deems certain foreign private issuers that supply Exchange Act reports comparable to their domestic counterparts to have complied with the first three Registrant Requirements.

The seventh eligibility requirement, which grants to a majority-owned subsidiary the Form S-3 eligibility of a parent that guarantees the subsidiary's securities, is substantially similar to its Form S-7 predecessor. However, a sentence has been added to remind registrants that such a guarantee constitutes a separate security.

b. *Transaction Requirements.* The Transaction Requirements have been significantly simplified and reduced from their counterparts in proposed Form A and existing Form S-16, with Form S-3 containing only four such requirements. If a registrant, which meets the eligibility requirements, meets the conditions of any one of the Transaction Requirements, it may use Form S-3 for the covered transaction.

i. *Primary and Secondary Offerings.* The first requirement proposes that, in order to use Form S-3 for primary and secondary offerings, an issuer must have a minimum of $150 million in aggregate value of voting stock held by non-affiliates (hereinafter referred to as "float"). This test was designed to make the Form available for such offerings only to those issuers which are actively and widely followed in the securities markets. The proposed standard is the product of Commission consideration of the comments received on the ABC eligibility criteria and supplementary research and consultations undertaken during the interim period. These research and consultation activities included reviewing the eligibility criteria used by trading market organizations to identify similarities of objectives and criteria with those of the Commission; examining the research and reporting practices of investment institutions and other financial information disseminators to assess the breadth of information dissemination in security markets; and examining the factors considered in the adoption of similar eligibility standards for Form S-16.

In addition, a survey of a sample of registrants provided the Commission with background information for its deliberations. The Registrant Monitoring Survey was used to gather information on various issuer specific financial and market characteristics that potentially could serve as eligibility criteria for the proposed Forms. The survey was based on a statistical sample of registrants listed on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), and the National Association of Securities Dealers Automated Quotations System ("NASDAQ"), a sample universe consistent with the Commission's interest in differentiating among companies based on market following. For each registrant, information was collected on financial characteristics, such as earnings, revenues and asset size, and market characteristics such as market capitalization, float and trading volume. The survey permits an assessment of the statistical relationships between various prospective criteria and an understanding of the impact of various eligibility frameworks on the sample universe of companies.[27]

[26] For the same reasons the requirement for distribution of Rule 14a-3(b) reports also was dropped from the provision (as proposed in Form A) relating to foreign private issuers discussed below.

[27] The drawn sample was selected under the joint direction of the Division of Corporation Finance and the Directorate of Economic and Policy Analysis for use in an ongoing three year study of proxy disclosure among publicly reporting companies. *See Staff Report on Corporate Accountability*, 96th Cong., 2d Sess. provided for use of the Senate Comm. on Banking, Housing and Urban Affairs (1980), pp. 589-595. It consists of 1200 companies traded on the NYSE, AMEX, NASDAQ, regional exchanges and non-NASDAQ over-the-counter markets. The sample was stratified in order to ensure representation of various trading markets. A stratified sample divides the population into homogeneous subparts (strata)—in this case, based on trading market—and takes a random sample within each stratum. The drawn sample consists of four strata, representing NYSE companies, AMEX companies, NASDAQ companies, and regional exchange and non-NASDAQ over-the-counter companies. A stratified sampling technique generally is viewed as a preferable sampling method in that it allows the use of a smaller sample without any loss of precision.

Sampling procedures are often shaped by cost and practicality, and this sample is no exception. The drawn sample does not contain the following types of issuers: companies which registered with the SEC after January 1, 1979; companies which filed 1979 proxy statements with the SEC but either had a fiscal year that ended before December 31, 1978, or had filed proxy materials on or before January 15, 1979; companies with proxy statements that related to approvals of mergers, acquisitions, or business failures; and investment companies. There is no reason to believe that the absence of these types of issuers causes the sample to be less representative of the universe of companies; the characteristics of these issuers, as a class or classes, are not likely to differ from others with respect to the items surveyed.

The response sample for the Registrant Monitoring Survey consists of 929 companies. In other words, of the 1200 companies originally drawn, there are 271 companies which, for various reasons, are not included in the response sample. The major reason for the smaller response sample size is the removal of regional exchange and non-NASDAQ over-the-counter issuers from the sample. These types of issuers constituted 200 companies, or 18 percent, of the 1200 companies in the drawn sample. This percentage is considerably smaller than the actual percentage of regional exchange and non-NASDAQ over-the-counter issuers among publicly reporting companies. Mergers, acquisitions, and business failures further depleted the stratum of companies. This underrepresentation would have made it difficult to draw conclusions about the universe of companies from the survey results. The use of a stratified sampling technique allowed the removal of such companies without adversely affecting the remaining sample.

By removing regional exchange and non-NASDAQ over-the-counter companies, the survey is limited to NYSE, AMEX and NASDAQ companies. Among those companies selected for the sample, a number of issuers were later removed due to mergers, acquisitions and business failures. In addition, some issuers were deleted because a Form 10-K was not available for completion of a survey. The loss of these companies should not significantly detract from the degree to which the sample mirrors

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The proposed criteria are the product of two related considerations. First, the Commission sought to identify the types of criteria that have the strongest relationship to widespread dissemination in and following by the market place. Second, the Commission sought to determine the threshold levels that delineate those companies for which information is widely disseminated. These considerations are consistent with the view that, for certain companies that are widely and actively followed by the market, prospectus disclosure to potential investors may be limited to essential matters concerning the issuer and the offering without decreasing investor protection or market efficiency.

The Commission believes that the proposed eligibility standard for primary and secondary offerings defines that segment of issuers which are subject to extensive ongoing monitoring and evaluation in the securities markets. The Commission specifically invites commentators to address the proposed criterion, with particular attention to whether it fulfills this objective. Commentators are urged to supplement their views with specific standards employed by securities market participants in making research or investment coverage decisions. The following discussion of the considerations that led to its proposal is provided in order to acquaint commentators with factors they should address.

(A) Types of Criteria

In considering prospective types of criteria, the Commission did not limit itself to simply reexamining the existing Form S–16 standards or the earlier proposed Form A standards. The Commission reviewed various types of criteria used by investment institutions in research coverage decisions, by financial publishers and service providers in reporting decisions, by trading market organizations in listing and delisting situations and by the Federal Reserve Board in determining marginable over-the-counter stocks. In the course of its deliberations, the Commission considered as possible criteria market capitalization, float, asset size, net income, revenues, trading volume, number of shareholders, and number of market makers. In addition, the use of multiple year trends for such criteria was considered.

The decision to propose float as an eligibility standard resulted from the comments received on the ABC Release and the Commission's research, consultations and experience. Float is a widely used eligibility criterion among trading market organizations that seek to measure the breadth of market following in listing and delisting situations. The NYSE, AMEX and NASDAQ each use float as an eligibility standard. In addition, the Federal Reserve Board uses float as a criterion to delineate over-the-counter issues that may be traded on margin. Moreover, commentators on the ABC Release, with few exceptions, supported the continued use of float as an eligibility standard, although there was a diversity of views on the appropriate threshold level.

Among information disseminators, the types of criteria used by investment institutions are viewed as having the greatest relevance to the development of eligibility criteria. Other types of information disseminators, such as general economic and financial publishers, analytical/advisory services, and statistical/reference services, appear to use sparse numerically-defined criteria in reporting coverage decisions. Moreover, only investment institutions have the capacity to both synthesize market information and directly translate their research into investment decisions, thereby impacting market prices. Consultations with nine investment institutions revealed that float is a prominent, numerically-defined standard in making research coverage decisions.[28] The prominence of this criterion apparently reflects the concern of investment institutions that covered issues have sufficient market depth to support "buy" and "sell" recommendations without price distortion. Moreover, float is often viewed as an indicator of potential investor demand for research products of the investment institutions, i.e., the greater the outside holdings and visibility of an issue, the greater the likely interest of investors in research products. Regardless of the reasons for the wide use of public float as a coverage consideration, the Commission views as significant the strong relationship between float and information dissemination to the market and following by investment institutions.

In addition to float, the Commission also considered utilizing trading volume units as an eligibility standard. Trading activity also appears to shape the nature of information dissemination to and following by the market. Trading volume was among the prominent criteria used by the surveyed investment institutions in making research coverage decisions. Like float, this standard is often viewed as an indicator of the market depth of an issue. However, the use of trading volume as an eligibility criterion can arguably add uncertainty to an issuer's eligibility to use Form S–3. Also, the use of trading volume as a criterion may tend to operate against those issues that are held by investors for an extended length of time. In view of these and other concerns, the Commission is not proposing the use of trading volume units as an eligibility criterion. However, in the discussion of threshold levels below, the Commission requests comments on the tandem use of trading volume and public float as an eligibility test to supplement a separate float standard.

Other types of measures also were considered by the Commission, but rejected for use as eligibility standards. These measures include earnings, market capitalization, number of shareholders, number of market makers, asset size and revenues. The various measures were deemed inappropriate for either of two reasons: (1) the measure appeared to have no relationship to the breadth of information dissemination in the market; or (2) the measure was so statistically related to float that the criterion would have had a largely duplicative effect as an eligibility standard.

Proposed Form A instructions contained an earnings-based eligibility criterion. This earnings test, which required the issuer to have had consolidated income of at least $250,000 for at least three of the past four years, arose from the historical antecedents of the form, existing Form S–7 and S–16. Commentators expressed a diversity of opinion regarding the earnings standard. A few commentators suggested that the earnings test was an appropriate criterion, but that the $250,000 threshold was too low. Others recommended that the standard be lowered or eliminated as a criterion. This latter group of commentators posited that the earnings test would deny some of the largest, most widely followed public companies

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the universe of NYSE, AMEX and NASDAQ companies.

The response sample size of 929 issuers is 18.8 percent of the universe of the 4950 companies listed on the NYSE, AMEX and NASDAQ. This is an adequate sample size for simple random sampling, and a more than adequate sample size for stratified sampling. In addition to having a large enough sample to yield results of adequate precision, the characteristics of the sample companies must be representative of the universe. The use of a random sampling technique within each strata is designed to facilitate the selection of a representative, unbiased sample.

To facilitate public comment on these proposals, a copy of the SEC Registrant Monitoring Survey materials and background documentation will be placed in Public File S7–849.

[28] For a summary of these consultations, *see* Public File No. S7–849.

use of a short from registration statement during years in which they had a loss. Consultations with investment institutions and other information disseminators confirmed that earnings was not among the most important considerations in coverage decisions. A computer analysis of the relationship between earnings and the other proposed criteria revealed little basis for retaining an earnings-based standard. For these reasons, the Commission removed the earnings standard from the eligibility framework.

A measure closely related to float is market capitalization. While float represents the aggregate market value of stock held by non-affiliates, market capitalization represents the aggregate market value of all outstanding stock. The similar definitional bases for the two standards pressage a strong statistical relationship. This relationship renders the use of both standards as eligibility criteria duplicative and unnecessary. Consultations and research suggest that, although market capitalization is a consideration in the research coverage decisions of investment institutions, float is more consistent with the objectives of the eligibility framework. This finding is consistent with the Commission's earlier decision to reject market capitalization as an eligibility factor for Form S–16, determining that " 'float' available for public trading is more indicative of general market interest in a company than total market capitalization which may include significant amounts of stock not available for trading." [29]

Other factors considered as eligibility criteria included the number of shareholders of an issuer, which did not prove to be necessarily indicative of the general interest in the securities of an issuer. A test based on the number of shareholders may tend to operate against issuers with relatively higher proportions of investors with large holdings. By definition, issues attracting large numbers of investors with large holdings have a smaller number of shareholders for the same number of shares outstanding. As a result, a company with a relatively large number of substantial investors might not qualify, while a company with a larger number of small investors might qualify for eligibility. This effect would be inconsistent with the Commission's interest in the breadth of information dissemination, as the coverage decisions of investment firms can be influenced by the needs of their larger institutional clients.

[29] Form S–16 Release.

The number of market makers for a particular issue may be an indicator of brokerage following in the over-the-counter market, but it is not an applicable measure for all issues listed on exchanges. Conversely, the Commission believes that the float standard is an acceptable indicator of information dissemination regardless of the trading market. In the absence of a demonstrated reason to supplement the float requirement for over-the-counter issues, the Commission finds that a market maker standard is not a necessary component of an eligibility framework.

The asset size and revenues of a company tend to be more strongly related to the nature of the issuer's business than securities market following. Moreover, the use of revenues as a standard would tend to operate against companies suffering temporary business downturns due to cyclical changes in the economy.

(B) Threshold Levels

In determining that float is an important factor in information dissemination decisions, the Commission sought to establish numerical threshold levels that delineate those companies for which information is widely and effectively disseminated. This release proposes a threshold level of $150 million in float. The proposed threshold is the product of a review of the comments on the ABC Release, an assessment of the practices of investment institutions in making research coverage decisions, and an analysis of the implications of various thresholds through the use of the Registrant Monitoring Survey. In addition, the Commission considered the factors that led to the adoption of the $50 million standard for Forms S–7 and S–16.

ABC commentators on the $50 million standard in Form A generally opined that the float threshold should be raised. Of those few commentators that suggested specific alternative levels, several recommended $100 million as a more appropriate standard. One commentator recommended that the float test be increased to at least $150 million since few companies with market capitalization of less than $250 million are followed by analysts of even the brokerage firms with the largest staffs. Among those supporting a lower threshold, one commentator suggested a $25 million standard, so as to allow use of Form S–3 by companies in service-related industries that do not require large amounts of capital to generate revenues and profits.

Commission consultations with the investment community confirmed the use of numerically-defined criteria by investment institutions to assist in coverage decisions. Of the consulted institutions using float as a criteria, the numerical thresholds ranged from $20 million to $100 million. However, the role of these numerically defined criteria do not allow ready conclusions on the scope or breadth of widely followed issues. Investment institutions typically view the numerical criteria as an aid to decision-making. Companies meeting the criteria are not assured of coverage; they are merely assured of further consideration for ongoing monitoring and evaluation. In practice, only a portion of the companies meeting the numerical threshold actually receive ongoing monitoring and evaluation. For example, a major investment firm requires that an issue have a float of at least $20 million and a daily trading volume of at least 2000 shares in order to be considered for coverage. But, in practice, most of the issues actively followed by the firm have a float of over $100 million, and even at that level an issue is not assured of coverage.

Since investment institution coverage thresholds are at best an indicator of the segment of companies *not* followed by analysts (i.e., those companies failing to meet the threshold level), a more relevant factor is the threshold over which all issuers are covered on a regular basis. Among the investment firms contacted, none felt confident in identifying such a threshold. However, there appeared to be general recognition that as the public float level increases the proportion of actively followed issuers in the group also increases.

The release which adopted the $50 million requirement for the use of Form S–16 [30] stated that "this requirement will provide some assurance that, in addition to wide dissemination of information about companies in the marketplace, security analysts follow companies of this size." [31] Based on its recent research and consultations, the Commission now believes that the $50 million standard does not provide the necessary level of assurance for the use of proposed Form S–3.

The origin of the $50 million standard was a report by the Financial Analysts Federation ("FAF") to the Advisory Committee on Corporate Disclosure.[32] The FAF was requested to survey the practices of investment institutions in order to determine if, "in the universe of

[30] S–16 Release.
[31] *Id.*
[32] *Id.*

publicly held companies. . . . there (is) an identifiable segment of companies which are *not* the focus of significant fundamental security analysis" (emphasis added).[33] The FAF report described a range of coverage thresholds based on market capitalization, varying from less than $15 million to over $200 million. At the time, the $50 million threshold was viewed as meeting Commission objectives. However, in the context of the proposed forms, the Commission views the more important consideration to be that segment of companies which are the focus of extensive ongoing monitoring and evaluation, rather than those which are not. As noted, the threshold level of this segment if likely to be considerably higher than that segment of companies which is *not* actively followed on an ongoing basis.

In the absence of conclusive threshold data from the investment community, the SEC Registrant Monitoring Survey was used to provide supplemental background information. The survey results allowed the Commission to test the implications of various eligibility thresholds on a selected sample of issuers listed with the NYSE, AMEX and NASDAQ. The Commission considered threshold levels ranging from $50 million to $250 million. The reasons underlying the proposed $150 million standard are articulated in the discussion that follows.

A $50 million float standard was considered by the Commission but rejected because it failed to provide the necessary level of assurance that eligible issuers indeed are actively followed by the securities markets. The survey results indicated that 49.7 percent of the sample issuers would be eligible to use Form S–3 if the float threshold was established at $50 million.[34] Extending this percentage to the universe of all NYSE, AMEX and NASDAQ listed companies, roughly 2,460 companies (49.7 percent) would be eligible to use proposed Form S–3,[35] or estimated 27.3 percent of all publicly reporting companies.[36] The Commission does not believe that such a large number of companies is actively and widely followed in the marketplace. Consultations suggest that, with one notable exception, the research operations of larger investment institutions tend to focus their analytical efforts on 300–500 issuers at any one time. Given the propensity for wide overlapping of research activities, and indeed the need for such extensive overlapping to assure wide and intensive information dissemination, the Commission did not have sufficient comfort that a $50 million threshold was appropriate for proposed Form S–3.

The Commission also considered proposing a $250 million threshold for the float criterion. As noted previously, there seems to be general recognition that as the level of public float increases the proportion of actively followed issuers also increases. In other words, the proportion of issuers with a float over $250 million that are not actively followed by the markets will likely be less than the proportion of similarly followed issuers with a float over $100 million. Moreover, the percentage of the companies in the survey sample that met the $250 million float requirement coincides with the Commission's original proposal of making the form available to a "small top tier of companies . . . whose corporate information is widely disseminated.[37] The survey results indicate that 21.9 percent of the issuers in the sample would be eligible to use Form S–3 with an eligibility threshold at $250 million. If this percentage is extended to the universe of all NYSE, AMEX, and NASDAQ-listed issuers, roughly 1,084 companies (21.9 percent) would be eligible to use Form S–3,[38] an estimated 12.0 percent of all publicly reporting companies.[39]

The desirable features of the $250 million standard are somewhat dampened by the absence of conclusive data on the numerical bounds of actively followed issuers. While desiring to limit the use of Form S–3 to issuers which are subject to ongoing monitoring and evaluation in securities markets, the Commission conversely does not intend to unduly restrict the use of the abbreviated prospectus. While tentatively deciding against a $250 million standard, the Commission invites comments on the applicability of a $250 million float requirement to its concern for limiting eligibility to widely and actively followed issuers.

The Commission today proposes that an issuer must have a minimum float of $150 million in order to be eligible to use Form S–3 for primary and secondary offerings. Although significantly below the $250 million standard, the Commission tentatively considers this criterion as providing the necessary level of assurance that eligible issuers will be subject to ongoing monitoring and evaluation. Moreover, the results of the Registrant Monitoring Survey suggests an eligible universe of issuers that is consistent with its original "top tier" approach. The survey results indicate that 30 percent of the issuers in the sample would be eligible to use the short-form prospectus under a $150 million standard. Extending this percentage to the universe of all NYSE, AMEX and NASDAQ-listed issuers, roughly 1,485 companies (30 percent) would be eligible to use Form S–3,[40] or an estimated 16.5 percent of all publicly reporting companies.[41]

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[33] *Id.*

[34] This percentage figure is based on a sample size of 882 issuers. Of the total sample size of 929, usable float data was unavailable for 59 issuers. Unless otherwise indicated, all other percentages in this section that are related to the survey sample are based on a sample size of 882 issuers.

[35] This figure is calculated by multiplying the sample percentage of 49.7 percent by 4,950 companies, the approximate size of the universe of NYSE, AMEX and NASDAQ-listed companies as of December 31, 1980. The actual size of this universe varies constantly with listing and delisting decisions. This type of extrapolative calculation can accent any statistical biases in the survey sample; the figure should be viewed as an estimate provided only for comparative purposes.

[36] This figure is calculated by dividing the estimated number of applicable NYSE, AMEX and NASDAQ-listed companies (2,460) by the approximate number of publicly reporting companies (9,000). The actual number of publicly reporting companies varies over time. To the extent that there are relatively few reporting companies traded on regional exchanges and in non-NASDAQ over-the-counter markets that could meet a $50 million float test, this percentage figure may be viewed as an indicator for the percentage of all publicly reporting companies eligible to use proposed Form S–3.

[37] Securities Act Release No. 5923 (April 11, 1978) [43 FR 16677].

[38] This figure is calculated by multiplying the sample percentage of 21.9 percent by 4,950 companies, the approximate size of the universe of NYSE, AMEX and NASDAQ-listed companies. This type of extrapolative calculation can accent statistical biases in the survey sample; the figure should be viewed as an estimate provided only for comparative purposes.

[39] This figure is calculated by dividing the estimated number of applicable NYSE, AMEX and NASDAQ-listed companies (1,084) by the estimated number of publicly reporting companies (9,000). The actual number of publicly reporting companies varies considerably over time. To the extent that there are relatively few reporting companies traded on regional exchanges and in non-NASDAQ over-the-counter markets that could meet a $150 million float test, this percentage figure may be viewed an an indicator for the percentage of all publicly reporting companies eligible to use proposed Form S–3.

[40] This figure is calculated by multiplying the sample percentage of 30 percent by 4,950 companies, the approximate size of the universe of NYSE, AMEX and NASDAQ-listed companies as of December 31, 1980. This type of extrapolative calculation can accent statistical biases in the survey sample; the figure should be viewed as an estimate provided only for comparative purposes.

[41] This figure is calculated by dividing the estimated number of applicable NYSE, AMEX and NASDAQ-listed companies (1,485) by the estimated number of publicly reporting companies (9,000). To the extent that there are relatively few reporting companies traded on regional exchanges and in

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The numerical impact of the $150 million standard on issuers having previously used Form S–16 for registering primary equity offerings should be minimal. In the Registrant Monitoring Survey, it is estimated that less than 1.4 percent of the sample companies with a public float of under $150 million previously used Form S–16 for primary equity purposes.[42]

The Commission also is considering supplementing the $150 million float standard with an alternative eligibility test. Under the alternative test, an issuer with a public float of $100 million and an annual trading volume of 3 million shares would also be eligible to use Form S–3. This tandem standard, when coupled with the $150 million float test, results in approximately 32 percent of the issuers in the survey sample being eligible to use the short-form prospectus.[43] Extending this percentage to the universe of all NYSE, AMEX and NASDAQ—listed companies, roughly 1584 companies would be eligible to use Form S–3 under the eligibility framework,[44] or an estimated 17.6 percent of all publicly reporting companies.[45]

Although the trading volume remains a somewhat volatile standard, its coupling with float would provide additional stability. And while the use of trading volume as an eligibility criterion may tend to operate against issues with investors holding stock for long periods, this dual standard may provide a means for recognizing those issuers intensively followed in regional markets. Although the Commission's consultations suggest a relatively high level of float is required before a nationally traded issue is actively followed, it might be posited that for certain regionally traded issues with high trading volumes a lower level of float may be more indicative of the extent of active following, due to the more limited character of the regional trading areas. While the Commission is tentative in its views on this approach, the complementary relationship between trading volume and float would allow the Commission to propose a lower level of float while assuring a minimal level of active following through a relatively strenuous trading market standard. The Commission requests specific comment on whether the alternative approach is preferable to that pertaining only to float and whether Form S–3 should have both approaches as alternatives. The Commission encourages commentators to supplement their views on float and trading volume with empirical data.

ii. *Investment Grade Debt Securities.* Under the second Transaction Requirement any registrant which meets the Registrant Requirements, even one which does not meet the float criteria, would be able to register certain high grade non-convertible debt securities, defined as "investment grade debt securities," on Form S–3. This proposal reflects the views of a number of commentators on the ABC Release and the Commission's position that with respect to offerings of high quality debt issues a detailed prospectus is unnecessary since such securities are generally purchased on the basis of interest rates and security ratings.[46]

Formerly, the Commission provided a short registration statement, form S–9, which permitted the registration of certain high quality debt securities.[47] The criteria for use of former Form S–9 related primarily to the quality of the issuer. They included net income during each of the registrant's last five fiscal years, no defaults in the payment of principal, interest or sinking funds on debt or of rental payments for leases, and various fixed charge coverages (at least three for utilities and six for other industries). While these eligibility criteria delineated the type of issuer of high quality debt for which Form S–9 was intended, certain of its requirements may have overly restricted the availability of the form. Rather than base the availability of Form S–3 on specified quality of the issuer criteria, the Commission believes that security ratings are a more appropriate standard. In addition to considering indicia of the quality of the registrant, security ratings are also based on marketplace information[48] about the registrant which is analogous to the efficient market for widely followed equity securities. Moreover, security ratings issued by nationally recognized statistical rating organizations are widely used and relied upon by the marketplace. Thus, security ratings appear to provide a recognized criterion for the use of proposed Form S–3.

The proposed Form would define an "investment grade debt security" as a non-convertible debt security which, at the time the registration statement becomes effective, is rated in one of the top four corporate bond categories by at least one nationally recognized statistical rating organization.[49] The proposed use of the top four categories is consistent with the Commission's current use of securities ratings[50] and with the categories used by the rating organizations themselves, i.e., Standard & Poor's Corporation, Moody's Investor Service and Fitch Investors Service, Inc.

In view of the significance of this criterion to the use of Form S–3, the Commission requests specific comment on this threshold and on the concept of using security ratings to determine eligibility to use the abbreviated form. In addition, the Commission also is specifically requesting comments on a second possible definition of "investment grade debt securities", namely a definition utilizing specific fixed charges coverage ratios as was done in rescinded Form S–9. It would appear that most state statutes that use fixed charges coverage ratios in defining suitable debt investments for banks and other "fiduciaries" use a coverage ratio

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non-NASDAQ over-the-counter markets that could meet a $150 million float test, this percentage figure may be viewed as an indicator for the percentage of all publicly reporting companies eligible to use proposed Form S–3.

[42] The survey results indicate that 78 companies that previously used S–16 would be ineligible under a $150 million float test. An analysis of all Form S–16 users between May 30, 1978 and December 31, 1980 reveals that 15.1 percent of the companies using Form S–16 registered primary equity offerings. Applying this percentage to the 78 companies above, an estimated 12 companies in a sample of 851 issuers (1.4 percent) having previously filed Form S–16 for primary equity offerings would be ineligible under a $150 million float test.

[43] This percentage figure is based on a sample of 870 issuers.

[44] This figure is calculated by multiplying the sample percentage of 32.0 percent by 4950 companies, the approximate size of the universe of NYSE, AMEX and NASDAQ—listed companies. This type of extrapolative calculation can accent statistical biases in the survey sample; the figure should be viewed as an estimate provided only for comparative purposes.

[45] This figure is calculated by dividing the estimated number of applicable NYSE, AMEX and NASDAQ—listed companies (1584) by the estimated number of publicly reporting companies (9000). To the extent that there are relatively few reporting companies traded on regional exchanges and in non-NASDAQ over-the-counter markets that could meet a $150 million float test, this percentage figure may be viewed as an indicator for the percentage of all publicly reporting companies eligible to use proposed Form S–3.

[46] These commentators indicated their belief that persons who invest in debt securities generally require less disclosure than equity investors and usually are primarily interested in the bond or credit rating and information on the general credit market conditions. *See* Summary of Comments.

[47] Form S–9 was rescinded on December 20, 1976, because it was being used by only a very small number of registrants. The Commission believed the lack of usage was due in part to interest rate increases which made it difficult for many registrants to meet the minimum fixed charges coverage standards required by the Form. Securities Act Release No. 5791 (December 20, 1976) [41 FR 56301].

[48] *See* H. Sherwood, *How Cooperate and Municipal Debt is Rated.* John Wiley & Sons, New York, at 22 (1976).

[49] This term would have the same meaning as in Rule 15c3–1(c)(2)(vi)(F) [17 CFR 240.15c3–1(c)(2)(vi)(F).

[50] *Id.*

of 1.5,[51] although there are significant variations. However, such a low ratio may be inconsistent with the proposed security rating category parameters. Accordingly, commentators focusing on this area are requested to address the proper thresholds for such ratios if they were to be adopted.

Finally, it should be noted that the proposed second Transaction Requirement applies only to classes of high grade debt securities. Preferred stock, which also commonly receives ratings assigned by nationally recognized statistical rating organizations, currently is treated in the same fashion as other equity securities with regard to eligibility for use of the proposed Form. The Commission specifically solicits comment on whether this Transaction Requirement should be expanded to permit the registration of preferred stock, such as that issued by the majority-owned subsidiary of a registrant eligible to use proposed Form S–3, that is rated in one of the top four preferred stock categories by one of the nationally recognized statistical rating organizations.

iii. *Securities Acquired Under a Form S–8.* The third Transaction Requirement continues the current practice under Form S–16 of allowing affiliates who acquire securities under a Form S–8 to resell such securities on a short form. While the Commission recognizes this practice is not entirely consistent with its position on other secondary offerings,[52] it believes such an exception is necessary to prevent undue hardships as Form S–8 is no longer available for such resales and, in any event, the quantity of securities sold under such circumstances is small.

iv. *Rights Offerings, Dividend and Interest Reinvestment Plans and Conversions or Warrants.* The fourth and final Transaction Requirement combines what were three separate requirements in proposed Form A and in existing Form S–16, namely requirements as to rights offerings, dividend or interest reinvestment plans, and conversions or warrants. These requirements cover transactions which are similar to each other, but dissimilar to most other public security offerings, in that they involve offerings to persons who already are security holders of the registrant and accordingly may be presumed to "follow" the registrant through corporate communications and Exchange Act reports. The Commission believes that such a class of offerees does not need the additional assurances of wide information dissemination provided by the test for primary offerings and accordingly is permitting such transactions to be registered on Form S–3 without compliance with such test. Moreover, the Commission also does not believe the holders of such convertible securities or warrants need the protection, if any, afforded by the restriction that there can be no commission or other remuneration paid for soliciting a conversion or exercise. It should be noted, however, the registrants are now required to send such offerees a report complying with Exchange Act Rule 14a–3(b) and that Form 10–K is always available to such offerees upon request.

Finally, three other matters should be noted. First, the definition of eligible dividend or interest reinvestment plans is proposed to be contained in Rule 405 [17 CFR 230.405] under the Securities Act. Second, dividend or interest reinvestment plans would not be made effective automatically.[53] Third, rights offerings by foreign private issuers will not be made on Form S–3, but presently are being studied, along with the comments received regarding foreign issuers, in connection with possible future form and rulemaking proposals.

v. *Deletions From Form S–16 and Proposed Form A.* The Commission is proposing to delete a number of transaction requirements currently contained in Form S–16 and proposed in Form A. Proposed Form A and existing Form S–16 are available for use by a registrant which was a majority owned subsidiary and had an eligible parent, a float of $250 million in debt and/or equity, and over 1,000 security holders receiving reports complying with Exchange Act Rule 14a–3(b). This provision is proposed to be deleted, because the Commission believes its float (voting stock) and investment grade (debt) tests have a more direct correlation to information dissemination about that registrant in the marketplace, and that Form S–2 offers a suitable alternative is such a subsidiary's securities are not investment grade debt, especially since the processing of a Form S–2 registration statement will ordinarily be similar to that for a Form S–3.

Another significant requirement of proposed Form A and existing Form S–16 was the requirement that primary offerings be underwritten. This requirement in Form A was the subject of a specific request for comment in the ABC Release. Thirty-six commentators responded, of which twenty-three were opposed to any underwriting requirement. After analyzing these comments, the Commission has decided not to repropose this requirement.

Secondary offerings were permitted on proposed Form A and on existing Form S–16 even if the issuer did not meet the requisite float requirements. This "exception" arose from the historical antecedents of Form A and Form S–16 but, as a number of commentators pointed out, from an investor standpoint there is no rational basis for such a differentiation. The Commission agrees and accordingly proposes to impose the same requirements on secondary offerings as on primary offerings made on Form S–3. Although this will increase the reporting burdens for certain offerors, the Commission believes it is necessary for the protection of investors and is somewhat mitigated by a number of factors. First, Form S–2, which gives a registrant the option of fulfilling many of the prospectus requirements by utilizing the annual report to security holders, would be available for all such secondary transactions. Second, under Securities Act Rule 153 (17 CFR 230.153) the only prospectus delivery requirements in the case of an exchange listed security would be delivery to the exchange, thereby making incorporation by reference of the annual report increasingly practical. Third, with certain limitations, Securities Act Rule 144 (17 CFR 230.144) may be available as an alternative to registration.

While the Commission believes that these changes regarding subsidiary and secondary offerings are appropriate in its new registration system, it requests specific comment on these matters.

In addition, Form A, as proposed, and current Form S–16 both contain provisions allowing secondary offerings by certain closed-end management investment companies. The Commission proposes to exclude investment companies registered under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a–1 et seq.] and business development companies that have made an election pursuant to Section 54(a) of the 1940 Act [15 U.S.C. 80a–53(a)] from eligibility to register securities on proposed Forms S–3 and S–2. The Commission's Division of Investment Management currently is reviewing the disclosure requirements applicable to registered investment companies and business development companies, and it will consider the appropriateness of short-form registration statements for investment companies in that context. To assist in that review, the Commission is hereby soliciting comments on whether short-

[51] *See, e.g.*, California Financial Code, § 1364 (West) and N.Y. Ins. Law 881 (McKinney).

[52] *See* Part v. below.

53 *See* Regulation C Release.

form registration statements would be appropriate for investment company registrants, and what requirements should be imposed for their use.

2. *Form S–2.* As mentioned above, the Registrant Requirements of Form S–3 also constitute virtually the entire eligibility requirements for the use of Form S–2 and are modeled after, but are not entirely the same as, those in existing Form S–7.[54] The Commission believes that the streamlined nature of the Form S–2 prospectus, while much more complete than that of Form S–3, still should be supplemented by the availability of a complete and current three year series of Exchange Act reports. Accordingly, it has retained the Exchange Act eligibility criteria which also are used for Form S–3.

In proposing Form B, the Commission advanced, for comment purposes, a series of three criteria designed to identify financially troubled companies and to preclude such companies from using the Form. Virtually no other area of the ABC Release elicited as much commentary as these criteria. Moreover, the commentators were almost unanimous in voicing disagreement with the Commission's suggested criteria and many questioned the appropriateness of using any type of "financially troubled company" criteria for determining eligibility to use proposed Form B. After analyzing the comments and undertaking further study, the Commission has decided to drop the "financially troubled company" eligibility criteria from proposed Form S–2. There were two principal reasons for the decision. First, the Commission, like the commentators, has been unable to develop any criteria which accurately reflect when a company is financially troubled. Second, the use of tests measuring the "quality of a registrant," such as these, is inconsistent with the basic precept of registrant classification under Forms S–3, S–2, and S–1, namely, the extent information about a registrant has been disseminated in the marketplace and the accuracy of such information.

Finally, in the ABC Release the Commission specifically requested comments on the advisability of imposing a market criterion, such as float, as a requirement for use of Form B. The majority of commentators was opposed to such a requirement. The Commission believes such criteria, which ensure adequate information dissemination, are necessary where, as in the case of an offering on Form S–3, much of the underlying disclosure is not delivered. However, with Form S–2 there is delivery of the basic disclosure documents and therefore the Commission believes that requirement can be deleted.

3. *Form S–1.* The eligibility requirements of Form S–1 are unchanged from those of its predecessor Form S–1 or from Form A. Accordingly, this more comprehensive form must be used by first time filers and others who have only been filing reports for a short period of time.

B. Other General Instructions

The Commission also is proposing a number of changes to the remaining General Instructions for the use of proposed Forms S–1, S–2 and S–3. The proposed amendments are intended to simplify the general instructions, to eliminate certain duplication with Regulation C, and to implement a number of changes concerning the use of the respective forms.

1. *Application of General Rules and Regulations.* In each of the proposed forms, the general instruction entitled "Application of General Rules and Regulations" (formerly General Instruction B) is proposed to be changed in several respects. First, the references to particular Regulation C rules which should be especially noted would be deleted to avoid giving the impression that certain rules under Regulation C are of greater importance than others. The Commission believes that the broad reference to Regulation C should be sufficient notice of the applicability of all of that regulation's provisions. Second, a new paragraph would be added to direct registrants' attention to Regulation S–K for the requirements as to the content of the registration statement. Finally, the instruction to Form S–3 would differ from those to Forms S–1 and S–2 by adding two provisions uniquely applicable to Form S–3. Those provisions indicate the two minor respects in which Regulation S–K does not apply (no table of contents or cross-reference sheet is required) and specify that registrants may provide information in addition to that expressly required by the form.

2. *Elimination of Regulation C Duplication.* The Commission is proposing to delete from proposed Forms S–1, S–2 and S–3 certain procedural instructions that were contained in proposed Forms A, B and C. These instructions are those entitled "Documents Comprising Registration Statement," contained in proposed Forms A, B and C; "Form and Content of Prospectus," contained in proposed Forms B and C; and "Preparation of Part II," contained in proposed Forms B and C. The Commission does not believe it is necessary to set forth these instructions in the Securities Act forms because, first, they are largely duplicative of provisions contained in Regulation C and second, where they contain provisions not now part of Regulation C, those provisions are of a similar procedural nature and therefore more appropriately contained in Regulation C. Accordingly, proposed Forms S–1, S–2 and S–3 do not contain these instructions. Those not already set forth in Regulation C are proposed to be added thereto in the Regulation C Release being published concurrently with this release.

3. *Automatic Effectiveness of Dividend or Interest Reinvestment Plans.* Proposed Form S–3 contains an instruction indicating that registration statements on that form with respect to securities offered pursuant to dividend or interest reinvestment plans will become effective automatically, with original registration statements becoming effective on the twentieth day after filing and post-effective amendments becoming effective upon filing. The Commission announced in the ABC Release that consideration was being given to allowing such registration statements to become effective automatically. A similar step was taken in February 1980, when amendments were adopted to Form S–8 (17 CFR 239.16b) to provide that original filings on that form become effective automatically twenty days after filing and post-effective amendments on Form S–8 become effective automatically upon filing.[55] The commentators agreed with the Commission that the same considerations that made automatic effectiveness of registration statements on Form S–8 advisable, *i.e.*, time and cost savings to issuers and the fact that no significant improvement to the quality of disclosure would result from staff review, are equally applicable to registration statements on proposed Form S–3 relating to dividend or interest

[54] Both proposed Form S–2 and existing Form S–7 contain the same requirements that registrants: (1) be U.S. corporations; (2) have securities registered under Exchange Act Section 12 or report under Section 15(d) of that Act; (3) have been reporting under the Exchange Act for 36 months; and (4) have been timely in filing such reports for the last 12 months. Both forms also grant eligibility to certain reporting foreign issuers. Form S–7 has an exclusion for any defaults in the past 36 months while the proposed S–2 excludes only those defaults occurring after the end of the most recent year for which certified financial statements have been filed. Finally, Form S–7 has an earnings test while proposed Form S–2 does not.

[55] Securities Act Release No. 6190 (February 22, 1980) [45 FR 13438].

reinvestment plans. Accordingly, the Commission is proposing to allow automatic effectiveness for such registration statements. Included in Form S–3 is an instruction modeled after the Form S–8 instruction for the same purpose. In addition, because not all Form S–3 filings would become effective automatically, a box has been added to the cover page of Form S–3 indicating for processing purposes the registration of securities pursuant to dividend or interest reinvestment plans. Finally, the Regulation C Release contains proposals for corresponding amendments to Rules 464, 473, 475A, 477 and 485 to reflect the automatic effectiveness of such registration statements.

4. *Foreign Subsidiaries.* The Commission also is proposing to delete from proposed Forms S–1 and S–2 the general instruction concerning the omission of information regarding foreign subsidiaries. That instruction, which was contained in proposed Forms B and C and is now contained in Forms S–1 and S–7, provides that required non-financial statement information with respect to any foreign subsidiary may be omitted to the extent that disclosure would be detrimental to the registrant and establishes the procedures to be followed in such cases. The Commission believes that instances of reliance on this provision are sufficiently unusual that a specific general instruction to the forms is unwarranted. Instead, any such cases would be addressed by the Commission's exercise of its administrative discretion.

5. *Exchange Offers.* Under the three tier system proposed in the ABC Release, only proposed Form C was contemplated for use in registering securities issued in an exchange offer for securities of another person. Comment was specifically invited as to whether proposed Forms A or B also should be available and, if so, what disclosure requirements would be appropriate for the various types of companies involved in exchange offer transactions. The Commission agrees with the many commentators who expressed the belief that the full scale disclosure requirements of Form S–1 may not be necessary for all registered exchange offers. The Commission also believes, however, that the unique disclosure needs presented by exchange offers would be better addressed in the context of an overall review of disclosure requirements applicable to all types of business combination transactions, including exchange offers. Accordingly, the Commission is considering the appropriate form and content of exchange offer registration statements as part of its separate business combination project. Therefore, for the time being, only proposed Form S–1 would be able to be used for those offers. In addition, of course, Form S–15 makes a reduced disclosure format available for certain limited exchange offers.

6. *Delayed or Continuous Offerings.* The ABC Release addressed the subject of offerings of securities on a delayed or continuous basis. First, commentators were invited to direct comments to the appropriateness of using all of the proposed forms for continuous primary offerings of all types and to the appropriateness of additional eligibility criteria or disclosure requirements for such offerings. Second, proposed Form C contained a general instruction referring to existing Guide 4, which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market. The Guides Release dealt further with this area, proposing to delete Guide 4 and to replace it with proposed Rule 462A, which would permit shelf registration for delayed and continuous offerings. Commentators' favorable responses to both the ABC Release inquiries and the Guides Release proposal have been considered and are reflected in the proposed Rule 462A being published concurrently with this release to permit registration for delayed or continuous offerings.[56] The Commission is deleting the general instruction from proposed Form S–1 as unnecessary in light of the other rulemaking being proposed to address shelf registration.

7. *Time Between Filing and Effectiveness.* Because the proposed Form S–3 eligibility criteria are based on the Commission's belief that information about companies using the form already is known or is so readily available that it need not be repeated in a prospectus, the Commission specifically inquired in the ABC Release whether it should impose a minimum time period between filing and effectiveness of a registration statement on Form A. The Commission indicated that such a minimum period would address the concerns that extremely short time in registration could diminish the opportunity afforded underwriters to make independent verification of the disclosure in the registration statement and could both deprive investors of sufficient time to review Exchange Act information incorporated by reference and deprive the market of sufficient time to assimilate publicly available Exchange Act information and information about the offering contained in the prospectus.

Most of the commentators who responded to this inquiry believed that a minimum period between filing and effectiveness would be of limited utility for underwriter verification purposes because it would occur after the prefiling period during which underwriters' due diligence efforts generally are made. A number of commentators also suggested that a specific minimum time requirement would obstruct the ready and flexible access to capital markets which Form S–3 is designed to provide.

The Commission believes that sufficient time should be allowed before a Form S–3 registration statement becomes effective to ensure that the information contained in the registration statement, both that presented directly in the prospectus and that incorporated therein from Exchange Act reports, is publicly available and assimilated by the market. The Commission does not believe that Form S–3 registration statements should become effective unless both the Exchange Act information about the issuer and the disclosure presented in the prospectus have been sufficiently available to the public. Nevertheless, in view of the differences which exist among offerings and the difficulty of setting a uniform time period, the Commission believes it can more effectively deal with this problem through its administrative discretion to grant requests for acceleration, and, therefore, is not proposing a minimum time period requirement before Form S–3 registration statements may become effective.

C. Disclosure Provisions

In proposed Forms S–1, S–2 and S–3, the Commission has developed a Securities Act registration system which identifies the information material to investment decisions in the context of all public offerings and then determines in what form and to whom issuers must disseminate such information. The material information will be required to be part of all Securities Act registration statements, regardless of the form used, through incorporation by reference in some cases. Differences among the forms primarily involve dissemination, i.e., the extent to which the required information must be presented in the prospectus, or may be presented in other documents delivered with the prospectus and incorporated by reference, or may be simply incorporated by reference from

[56] Shelf Registration Release.

information contained in the Exchange Act continuous reporting system.

Generally, it is the issuer-oriented part of the information material to a public offering, as opposed to the transaction-specific information, which, depending on the form available, may be satisfied otherwise than through full prospectus presentation. This information includes the basic package of information about the issuer which the Commission believes is material to investment decisions in all contexts and thus is also required to be presented in annual reports to the Commission on Form 10–K and in annual reports to security holders.[57] Information about the offering will not have been reported on in any other disclosure document or otherwise have been publicly disseminated and thus will be required to be presented in all cases.

1. *Uniform Disclosure Requirements.* The ABC Release proposed to make uniform the disclosure requirements relating to the offering of securities being registered, with proposed Form A serving as the initial repository of the uniform requirements. The Commission stated, however, that it intended these uniform disclosure items ultimately to be placed in Regulation S-K. The Guides Release then proposed moving these items from proposed Form A into Regulation S-K and, where appropriate, proposed to augment the text of the items with provisions proposed to be moved from various of the Guides for the Preparation and Filing of Registration Statements and Periodic Reports ("the Guides"). The Regulation S-K Release being published concurrently with this release reproposes Regulation S-K in its entirety.

Regulation S-K, as currently proposed, includes as § 229.500 (Registration Statement and Prospectus Provisions) and as Item 202 of § 229.200 (Securities of the Registrant) all those uniform disclosure requirements pertaining to public offerings of securities. Proposed § 229.500 of Regulation S-K is derived from the uniform items in proposed Form A, the Guides, and the suggestions of public commentators on both proposed Forms A, B and C and the Guides Release, as well as further staff consideration of all aspects of the integration rulemaking program, including the proposed sunset revision of Regulation C. All three forms, proposed Forms S-1, S-2 and S-3, require inclusion of the information specified by each of the items comprising § 229.500. Those items are: Item 501, Forepart of the Registration Statement and Outside Front Cover Page of Prospectus; Item 502, Inside Front Cover and Outside Back Pages of Prospectus; Item 503, Summary Information and Risk Factors; Item 504, Use of Proceeds; Item 505, Determination of Offering Price; Item 506, Dilution; Item 507, Selling Security Holders; Item 508, Plan of Distribution; Item 509, Interests of Named Experts and Counsel; Item 510, Indemnification of Directors and Officers; Item 511, Other Expenses of Issuance and Distribution; and Item 512, Undertakings. Attention is directed to the Regulation S-K Release for the text of those items and a discussion of the substantive provisions thereof.[58]

The order of the transaction-oriented disclosure requirements of Proposed Forms S-1, S-2, and S-3 calling for the disclosure specified in the provisions of § 229.500 has been rearranged to correspond to the order of the items within that section of Regulation S-K. This order of presentation of item requirements is intended to simplify registration statement preparation by corresponding to what is the most commonly employed registration statement format. Included in this reorganization of items within all three proposed forms is the proposed move of the item calling for disclosure with respect to the interests of experts and counsel named in the prospectus from Part II (information not required in prospectus) to Part I (information required in prospectus) of the registration statement. The Commission believes that such disclosure appropriately is presented in the prospectus.[59]

Part II of all three proposed forms will contain the disclosure concerning indemnification of directors and officers, information on other expenses of issuances and distribution, undertakings, and exhibits. In addition, Part II of proposed Form S–1 will call for financial statement schedules and disclosure with respect to recent sales of unregistered securities (proposed Item 701 of Regulation S–K).

2. *Incorporation by Reference.* The technique of incorporation by reference of Exchange Act disclosure documents is central to the integrated Securities Act registration system represented by proposed Forms S–1, S–2 and S–3. Proposed Form S–3 relies on incorporation by reference to replace prospectus representation of information about the issuer of the securities being registered. Proposed Form S–2 uses incorporation by reference to allow streamlining of the prospectus presentation of issuer-specific information. Proposed Form S–1 uses no incorporation by reference and instead requires full disclosure about the issuer of the securities to be presented in the prospectus.

The specific incorporation by reference provisions of proposed Forms S–2 and S–3 reflect a number of changes from those of proposed Forms A and B. First, the incorporation by reference items (Item 12 of both proposed Forms S–2 and S–3) would now be contained in Part I of the forms and would require incorporation of the specified reports and information by reference into the prospectus itself rather than into Part II of the registration statement.[60] Moving this item to Part I of the forms means that the prospectus will be deemed to contain full disclosure about both the issuer and the transaction regardless of whether the information is actually presented in the prospectus or is allowed to be incorporated therein by reference from other documents. Investors thus will be afforded the full protections of the liability provisions under the Securities Act, both those of Section 11 and those of Sectgion 12(2), with respect to information about the issuer without regard to the particular form used to register the securities offered.[61]

Second, unlike proposed Forms A and B, proposed Forms S–2 and S–3 would require the prospectus to contain the detailed description listing all material

[57] The components of the basic information package were identified in the 10–K Release, which adopted major revisions to Form 10–K and the annual report to security holders. These components are: (1) market price of and dividends on the registrant's common stock and related stockholder matters (now Item 9 of Regulation S-K, proposed to become Item 201); (2) selected financial data (now Item 10 of Regulation S-K, proposed to become Item 301; (3) management's discussion and analysis of financial condition and results of operations (now Item 11 of Regulation S-K, proposed to become Item 303); and (4) financial statements and supplementary financial information meeting the requirements of Regulation S-X and Item 12 (proposed to become Items 302 and 304) of Regulation S-K.

[58] An item requiring a table of capital structure has not been included in § 229.500 of Regulation S-K. The commentators who responded to the Commission's specific inquiry as to the need for a capitalization table in proposed Forms A, B and C generally agreed with the Commission that a requirement for such a table is unnecessary because information presented therein is readily apparent from other sources such as the financial statement.

[59] *See* Guide 56 and the text and discussion of proposed Item 509 in the Regulation S-K Release.

[60] Existing Forms S–8 and S–16 both require incorporation by reference into the prospectus. Part I of the registration statement.

[61] While Section 11 of the Securities Act imposes liability for the contents of the registration statement, Section 12(2) imposes liability for the offer or sale of securities "by means of a prospectus or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements * * * not misleading * * *."

incorporated by reference therein. A number of commentators were of the view that this information is most appropriately placed in the prospectus itself, as is the case with existing Forms S–8 and S–16. The Commission agrees that investors should be given the benefit of being informed that other documents or information are deemed part of the prospectus, particularly in light of the fact that investors may request and have provided to them without charge the documents incorporated by reference. The Commission believes that the benefit of notice to investors outweighs the advantages of flexibility and prospectus brevity which were sought in the proposed Forms A and B formulation.

Third, the Commission has deleted from the proposed Form S–2 and S–3 incorporation by reference items the provisions contained in item 8(b) of proposed Forms A, B and C concerning potential liability for documents incorporated by reference. These provisions were originally proposed as amendment to Form S–16 in 1978 [62] and were designed to address the concerns of underwriters and others over potential Section 11 liability for issuers' Exchange Act filings which they had not helped prepare but which are incorporated by reference into Securities Act registration statements. These provisions are proposed to be included in proposed Rules 412 and 418 of Regulation C. They, as well as a new rule relating to be responsibility of persons subject to Section 11 of the Securities Act in an integrated disclosure system, Rule 176, are discussed in a separate release published concurrently with this release.[63]

3. *Disclosure Requirements by Form.*

a. *Form S–3.* Proposed Form S–3 provides the shortest form for Securities Act registration. The prospectus would be required to present the same uniform Regulation S–K items calling for information about the offering which are discussed above. The Commission shares the views of the commentators who questioned the need for summary information in a short form prospectus, but believes that the proposed Regulation S–K item dealing with summary information and risk factors (Item 503), which directs registrants to consider whether the length or complexity of the prospectus makes inclusion of a summary of information therein appropriate, would call for a summary in a Form S–3 prospectus only where one would be meaningful. Similarly, in response to the commentators, the proposed Regulation S–K dilution item (Item 506) has been drafted to be sufficiently flexible so that it, too, would necessitate disclosure only where there could be material dilutive effects.

Information concerning the registrant would be incorporated by reference from Exchange Act reports, which would be available to investors on request. The documents required to be incorporated are the latest annual report on Form 10–K and 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 Form 10–K, including all Section 13(d) or 15(d) reports filed subsequent to effectiveness of the registration statement and prior to termination of the offering.[64] Unless there has been a material change in the registrant's affairs which has not been reported in an Exchange Act filing, the prospectus would not be required to present any information concerning the registrant. Where not reflected in filed Exchange Act reports incorporated by reference the following information would have to be included in the prospectus (1) financial information required by Rules 3–07 and 3–08 of Regulation S–X where the registrant has effected or is about to effect a transaction involving successions to a business for which such information is required;[65] (2) restated financial statements where there has been a change in accounting principles or a correction of an error and such change or correction requires a substantial restatement of financial statements or where a business combination accounted for as a pooling of interests has been consummated subsequent to the most recent fiscal year end; or (3) any financial information required because of a material disposition of assets outside the normal course of business. Where such information is incorporated by reference, the prospectus would be required to so state and to describe briefly the transaction, accounting change, error, or disposition. The Commission requests comment on the need for a brief prospectus description of subsequent material developments which are described in reports incorporated by reference.

The formulation of Proposed Form S–3 differs from that of proposed Form A in several major respects. First, the proposed Regulation S–K summary information item does not contain a requirement to include selected financial data. Thus, proposed Form S–3 does not require selected financial data concerning the registrant to be presented in the prospectus but relies instead on incorporating that data by reference from the registrant's Form 10–K. Second, only if an Exhange Act report has not been filed containing the information called for by Rule 3–07 or 3–08 would that information be included. Third, restated financial statements and information concerning material dispositions of assets would be treated the same as past or future successions to other businesses; all would trigger either full prospectus disclosure or a prospectus description of the incorporated information. This change reflects the public commentator's general agreement that the shortest form registration statement should still be available despite the occurrence of a transaction to which rule 3–07 or 3–08 is applicable and that mandatory presentation of Rule 3–07 or 3–08 financial information in all cases would be inconsistent with the theory of the Commission's shortest form registration statement, as well as with the treatment of restatements of financial statements and of material dispositions of assets.

b. *Form S–2.* Proposed Form S–2 provides a simplified form for registration by certain registrants. While it requires delivery of information about the registrant in addition to delivery of the same information about the offering as required by Form S–3, proposed Form S–2 significantly streamlines the registrant-specific disclosure by making the required level of disclosure delivered to investors that of the annual report to security holders pursuant to Rule 14a–3 rather than that of the annual report on Form 10–K. Required information about the registrant includes the basic information package components (market price and dividend data, selected financial data, financial

[62] Securities Act Release No. 5998 (November 17, 1978) [43 FR 56053].

[63] Section 11 Release.

[64] Despite the fact that subsequently-filed periodic reports under the Exchange Act are incorpoated by reference into a Form S–3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

[65] It should be noted that the Commission is enagaged in a rulemaking project to reexamine its rules and policies concerning pro forma financial information. This project may include, among other things, proposed amendments to Rules 3–07 and 3–08, Forms S–1, S–2 and S–3, when adopted, will include any changes necessitated by this pro forma project. If the pro forma project has not resulted in final rulemaking action when Forms S–1, S–2 and S–3 are adopted, any coordinating amendments necessitated by the pro forma project would be adopted subsequently, along with the adoption of the pro forma project rulemaking proposals.

statements [66] and management's discussion and analysis) and such other items (brief descriptions of business, segments, supplementary financial information) as are required to be included in the annual report to security holders pursuant to Rule 14a–3. Moreover, registrants are granted the option of providing this information either by presenting it in the prospectus or by delivering the latest annual report to security holders along with the prospectus.[67] Finally, the registrant's latest annual report on Form 10–K and periodic reports on Form 10–Q and Form 8–K must be incorporated by reference into the prospectus, and made available upon request, to round out the information provided about the registrant.

Several of the commentators who addressed proposed Form B questioned the value of providing registrants the option of satisfying information delivery requirements by either furnishing the annual report to security holders or including specified information about themselves in the prospectus. The Commission believes, however, that the option of annual report delivery provides registrants the opportunity to take advantage of an existing document to effect registration cost savings where appropriate, particularly since, as the form indicates, a legible facsimile of the annual report may be used. Because this provision is optional, registrants may elect not to deliver their annual reports in cases where doing so would be impracticable or where they choose not to do so for other reasons. The Commission believes that the option of delivering the annual report to security holders with the prospectus would be most helpful and cost effective in transactions which do not involve large numbers of offerees or which will be made at the market or over an exchange. For example, companies could avail themselves of this inexpensive method to register securities that might otherwise be offered in private placements or be the subject of fairness hearings required for exemption under Section 3(a)(10) of the Securities Act.[68]

A number of commentators suggested that the Commission designate the annual report on Form 10–K as the document to be used in Securities Act transactions. The Commission has determined, however, not to alter its choice of the annual report to security holders as the existing disclosure document which is allowed to be delivered in lieu of prospectus reiteration. This choice represents a policy decision to favor the readability of the annual report to security holders over the fuller disclosure of the annual report on Form 10–K. Experience to date with Form S–15,[69] which is an optional form for registration in limited types of business combinations usually not involving large numbers of offerees and which mandates delivery of the issuer's annual report to security holders, indicates that the use of the annual report to security holders for the purpose of Securities Act registration is viable. Registration statements on Form S–15 have been filed in ever-increasing numbers since the form was first adopted.[70] Of perhaps greater significance is the fact that a number of Form S–15 issuers have made maximum use of existing annual reports to security holders by electing to deliver the acquired company's annual report to security holders in addition to their own reports.

If the Form S–2 registrant elects the alternative of delivering its annual report, it must incorporate certain information in that document by reference and describe in the prospectus any material changes in its affairs since the end of the latest fiscal year reported in the delivered annual report. In addition, it must provide updating information but may avoid duplication of previously reported quarterly information because updating may be accomplished by any one of three means: (1) including in the prospectus such financial and other information as would be required to be reported in a report on Form 10–Q; (2) delivering a copy of the latest Form 10–Q with the prospectus and annual report; (3) delivering a copy of the latest informal quarterly report to shareholders if such report contained the same required information. In response to commentators' concerns about a loss of flexibility, the Commission has deleted the instruction which would have required a Form 10–Q used to accompany a prospectus to be filed at least ten days prior to effectiveness of the registration statement because it believes such an instruction unnecessary. At the same time, however, the Commission is proposing an amendment to Rule 402(a)(2) in the Regulation C Release for the same staff processing purposes that prompted the now deleted instruction. Rule 402(a)(2) would require that copies of Form 10–Q reports which registrants using Form S–2 or S–15 have chosen to deliver with the prospectus in lieu of prospectus reiteration must be included with all copies of the registration statement filed with the Commission. Finally, the Commission has added the informal quarterly report, if delivered with the prospectus, to the documents which must be incorporated by reference therein.

Proposed Form B would have disallowed the annual report option if the registrant has effected or is about to effect a transaction for which information is required by Rule 3–07 or 3–08 of Regulation S–X. Proposed Form S–2 has been changed to reflect the Commission's view, as well as that of the commentators, that the annual report option should be available in the case of a past or future succession to another business so long as information respecting the succession is presented in the prospectus or the annual report delivered with the prospectus.[71]

Proposed Form S–2 also reflects a change from proposed Form B in the treatment of disclosure with respect to oil and gas operations. Proposed Form B allowed registrants with oil and gas operations to use their annual reports to security holders but would have required such registrants which not elect the annual report option to include in the prospectus the same level of disclosure with respect to oil and gas operations as is required in annual reports on Form 10–K. As was pointed out by the commentators, this provision

[66] In response to the commentator's observations regarding Form B financial statement requirements, Item 11 of proposed Form S–2 would make clear that the financial statement requirements, with one exception, are those applicable to annual reports to security holders regardless of whether presented in the annual report or the prospectus. The exception involves Rule 3–07 and 3–08 transactions, for which additional financial disclosure is necessitated in all cases.

[67] In connection with the multiple document delivery aspect of Form S–2, where registrants choose to deliver other documents (annual reports to security holders, Form 10–Q reports or quarterly reports) together with the prospectus, they must deliver each such document with the preliminary prospectus, but need not redeliver such a document with the final prospectus if the recipient has already been given the document along with the preliminary prospectus.

[68] Section 3(a)(10) provides for an exemption from registration for securities issued in an exchange transaction where the terms and conditions of such issuance are approved after a hearing upon their fairness.

[69] Form S–15 was adopted as part of the integrated disclosure program in the S–15 Release and was intended to provide experience with the multiple document delivery concept and the use of the annual report to security holders.

[70] While the total number of Form S–15 filings for the six months ended March 31, 1981 was 39, there were 52 Form S–15 filings in April, May and June of 1981.

[71] The annual report delivery alternative would not be available if the annual report financial statements do not reflect (1) that there has been a change in accounting principles or an error where a substantial retroactive restatement is required; or (2) that there has been a material disposition of assets outside the normal course of business.

would have meant delivery of different disclosure respecting oil and gas operations depending on whether the registrant used the annual report option. Proposed Form S–2 contains no separate provision concerning oil and gas operations and thus requires consistent disclosure levels regardless of delivery method, because a prospectus would have to contain only the same level of information as required to be included in the annual report to security holders.

C. Form S–1

Proposed Form S–1 presents a simple format. Full disclosure of all material information about the offering and the registrant is required to be presented in the prospectus itself. No incorporation by reference to any Exchange Act documents is allowed. Proposed Form S–1 looks entirely to Regulation S–K for its non-financial substantive disclosure provisions. First, like proposed Forms S–2 and S–3, proposed form S–1 requires prospectus presentation of the offering-oriented items of § 229.500 of Regulation S–K and the description of securities (proposed Item 202 of Regulation S–K). In addition, the proposed Form S–1 prospectus must include the same information about the registrant as is required to be reported in an annual report on Form 10–K. This information includes, in addition to the basic information package with respect to the registrant,[72] the full Regulation S–K descriptions of business, properties and legal proceedings as well as the Regulation S–K disclosures with respect to management and security holders.[73]

With regard to disclosure concerning management and security holders, proposed Form c would have allowed registrants who have been reporting companies for three years to incorporate the required information by reference rather than set it forth in the prospectus. The Commission agrees with the view of some commentators that information as to the identity and background of management and the identity of principal shareholders is relevant information which should be included in the Form S–1 prospectus. Accordingly, proposed Form S–1 does not allow information on management and security holders to be incorporated by reference.

D. Other Aspects of Proposed Forms

1. *Audit Committees.* In proposing Forms A, B and C, the Commission specifically requested comment on whether to require disclosure concerning audit committees.[74] The Commission inquired as to whether such disclosure should be required and, if so, whether it should simply go to the existence of an audit committee or should, like Schedule 14A (17 CFR 240.14a–101), go further and include the functions performed and the number of meetings held. The Commission also pointed out that in the cases of reporting companies, this information is disclosed in election of director proxy statements and therefore requested comment on whether such a disclosure requirement should be limited to first time issuers.

All of the commentators who responded to the Commission's inquiry questioned the necessity for audit committee disclosure, especially for registrants other than first time issuers. These commentators generally favored the concept of audit committees but believed proxy statement disclosure is adequate with respect to the committees and their functions. Accordingly, the Commission is not proposing to require disclosure concerning audit committees in proposed Forms S–1, S–2, or S–3.

2. *Signature Provisions.* Several clarifying changes have been made in the signature provisions of proposed Forms S–1, S–2, and S–3. First, a sentence has been added to Instruction 1 to make explicit the staff's longstanding position that, where the issuer is a limited partnership and where a signing general partner is a corporation, a majority of its board of directors also must sign the registration statement. Second, Instruction 2 has been augmented by a reference to Rule 402 concerning manual signature and signatures pursuant to powers of attorney. Finally, in light of the selective review procedures employed by the Division of Corporation Finance and the proposed automatic effectiveness of certain Form S–3 registration statements, the signature provisions of proposed Forms S–2 and S–3 have been changed so that the registrant certifies that it meets the requirements for filing on the respective form. This provision is modeled after a similar provision added to the signature provision of Form S–8 when that form was amended to become effective automatically.[75]

3. *Summary Prospectuses.* Rule 434A (17 CFR 230.434a) sets forth conditions for the use of summary prospectuses permitted under Section 10(b) of the Securities Act, including a condition that the form used to register the securities provides for the use of summary prospectuses, and states that a summary prospectus shall contain the information specified in the instructions as to summary prospectuses in the registration form used. The Commission believes that the use of Rule 434A summary prospectuses in connection with registration on Forms S–1 and S–2 would be appropriate and, accordingly, proposed Forms S–1 and S–2 both contain instructions as to summary prospectuses. These instructions are derived from the similar instructions in existing Forms S–1 and S–7, both of which now provide for the use of summary prospectuses. The instructions have been modified to be consistent with the revised disclosure provisions of Forms S–1 and S–2, which in turn look to the proposed provisions of Regulation S–K. With the exception of the requirement to include a brief statement concerning material pending legal proceedings required in a Form S–1 summary prospectus, both forms would require summary prospectuses to contain the same information.

Text of Proposed Forms

17 CFR Chapter II is proposed to be amended as follows:

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[72] The basic information package information is called for in Item 11, which is captioned "Information with Respect to the Registrant." A separate reference to Rule 3–07 and 3–08 information has been added to the financial statement provision of Item 11 to make it clear as to whether that information, including financial statements of the acquired businesses, is required in Form S–1.

[73] Proposed § 229.400 of Regulation S–K sets forth the disclosure provisions respecting directors and executive officers (now Item 3, proposed to become Item 401); management remuneration and transactions (now Item 4, proposed to become Item 402); and security ownership of certain beneficial owners and management (now Item 6, proposed to become Item 403).

[74] The Commission has endorsed the concept of audit committees for over forty years. *See* Accounting Series Release 19 (December 5, 1940) [11 FR 10918]. More recently, in 1972, the Commission recommended the establishment of such committees "in order to assist in affording the greatest possible protection to investors who rely upon . . . financial statements." *See* Accounting Series Release No. 123 (March 13, 1972) [37 FR 6850]. In 1974, the Commission adopted an amendment to Schedule 14A of the proxy rules requiring disclosure of the existence and composition of the audit committee of the board of directors. *See* Accounting Series Release No. 165 (December 20, 1974) [40 FR 1010]. In 1978, the Commission further amended Schedule 14A to require disclosure of the functions performed by issuers' audit committees and the number of meetings held by such committees. *See* Securities Exchange Act Release No. 15384 (December 6, 1978) [43 FR 58522]. Most recently, the Commission authorized publication of the *Staff Report on Corporate Accountability*, which concluded that audit committees may be essential to an effective corporate accountability process. Division of Corporate Finance, Securities and Exchange Commission, printed for use of the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong., 2d. Sess. (September 4, 1980).

[75] Securities Act Release No. 6190 (February 22, 1980) [45 FR 13438].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

By proposing new registration statement Forms S–1, S–2 and S–3 set forth below:

§ 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.

Securities and Exchange Commission

Form S–3.—Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public———

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 462A under the Securities Act of 1933, please check the following box. ☐

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum aggregate price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form S–3—General Instructions

I. Eligibility Requirements for Use of Form S–3

This instruction sets forth registrant requirements and transaction requirements for the use of Form S–3. Any registrant which meets the requirements of I. A. below ("Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I. B. below ("Transaction Requirement") provided that the requirements applicable to the specified transaction are met.

A. *Registrant Requirements.* All registrants must meet the following conditions in order to use this Form S–3 for registration under the Securities Act of securities offered in the transactions specified in I. B. below:

1. The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

2. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or 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.

3. The registrant: (a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) [17 CFR 240.12b–25(b)] under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

4. Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to Section 13(a) or 15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock; or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

5. A foreign private issuer which satisifes 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.

6. If the registrant is a successor registrant, it shall be deemed to have met conditions 1., 2., 3., and 4. above if: (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (b) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

7. If a registrant is a majority-owned subsidiary it shall be deemed to have met the conditions of these registrant eligibility requirements (or the conditions of the Transaction Requirements below) 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.

B. *Transaction Requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

1. *Primary And Secondary Offerings By Certain Registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standy underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $150 million or more.

Instructions. The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. (See the definition of "affiliate" in Securities Act Rule 405 [17 CFR 230.405]).

2. *Primary Offerings of Certain Debt Securities.* Non-convertible debt securities to be offered for cash by or on behalf of a registrant, provided such debt securities are "investment grade debt securities," as defined below. A non-convertible debt security is an "investment grade debt security" if, at the time of effectiveness of the registration statement, it has been rated in one of the four highest rating categories for debt by at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(E) under the Securities Exchange Act of 1934 [17 CFR 240.15c3–1(c)(2)(vi)(E)]).

3. *Securities Registered on Form S–8.* Securities offered by affiliates for resale pursuant to the conditions specified in General Instruction C to Form S–8 (17 CFR 239.16b).

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants.* Securities to be offered (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach, or (b) pursuant to a dividend or interest reinvestment plan, or (c) 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; *provided* the issuer has sent to all record holders of such rights, or to all participants in

such plans, or to all record holders of such convertible securities or transferable warrants, respectively, material containing the information required by Rule 14a–3(b) [(17 CFR 240.14a–3(b))] under the Exchange Act and Items 401, 402, and 403 of Regulation S–K (17 CFR 229.400) within the twelve calendar months immediately preceding the filing of the registration statement, except that the information required by Items 401, 402 and 403 of Regulation S–K need only be provided to holders of rights exercisable for common stock, holders of securities convertible into common stock, participants in plans which may invest in common stock, or in securities convertible into common stock or warrants exercisable for common stock, respectively.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate. Notwithstanding Item 501 and 502 of Regulation S–K, no table of contents and cross-reference sheet are required to be included in the prospectus or registration statement prepared on this form. In addition to the information expressly required to be included in a registration statement on this Form S–3, registrants also may provide such other information as they deem appropriate.

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form S–3 solely with respect to securities offered pursuant to dividend or interest reinvestment plans will become effective automatically on the twentieth day after the date of filing (Rule 456, 17 CFR 230.456), pursuant to the provisions of Section 8(a) of the Act (Rule 459, 17 CFR 230.459). Pre-effective amendments to such a registration statement may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, 17 CFR 230.475a). Accordingly, the filing of a pre-effective amendment to such a registration statement will not commence a new twenty-day period. Post-effective amendments to such a registration statement on this Form shall become effective upon the date of filing (Rule 464, 17 CFR 230.464). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d), 17 CFR 239.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this Form become public upon filing with the Commission. As a result, requests for confidential treatment made under rule 485 (17 CFR 230.485) must be processed with the Commission staff prior to the filing of such a registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (17 CFR 230.402, 230.472) shall be filed with the Commission; *provided, however,* That the number of additional copies referred to in Rule 402(a)(2) may be reduced from ten to two and the number of additional copies referred to in Rule 472(a) may be reduced from eight to two, one of which shall be marked clearly and precisely to indicate changes.

Part I. Information Required in Prospectus

Item 1. *Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.* Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.* Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.* Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.500).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.500).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S–K (17 CFR 229.500).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (17 CFR 229.500).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (17 CFR 229.500).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.500).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

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 annual report to security holders and which have not been described in a report on Form 10–Q (17 CFR 249.308a) or Form 8–K (17 CFR 249.308) filed under the Exchange Act.

(b)(1) Include in the prospectus, if not included in the reports filed under the Exchange Act which are incorporated by reference into the prospectus pursuant to Item 12: (i) information required by Rules 3–07 and 3–08 of Regulation S–X (17 CFR Part 210) where the registrant has effected or is about to effect a transaction for which such information is required; (ii) restated financial statements if there has been a change in accounting principles or a correction of an error where such change or correction requires a substantial retroactive restatement of financial statements or where a business combination accounted for by the pooling of interest method of accounting has been consummated subsequent to the most recent fiscal year; or (iii) any financial information required because of a material disposition of assets outside the normal course of business.

(2) If the financial information specified in paragraph (b)(1) has been incorporated by reference from a filed report, state that such information has been incorporated by reference and briefly describe the subject transaction, accounting change, correction or disposition.

Item 12. *Incorporation of Certain Information by Reference.* (a) The documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus, by means of a statement to that effect in the prospectus listing all such documents.

(1) the registrant's latest annual report on Form 10–K (17 CFR 249.310) 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 10–K was required to have been 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 (1) above.

(b) The prospectus shall also state that all documents subsequently filed by the registrant pursuant to Sections 13, 14 or 15(d) of the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

Part II. Information Not Required in Prospectus

Item 13. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.500).

Item 14. *Indemnification of Directors and Officers.* Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.500).

Item 15. *Exhibits.* Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

Item 16. *Undertakings.* Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it meets all of the requirements for filing on Form S–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19—.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following

persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions. 1. 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, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to Transaction Requirement B.2., 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.

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

Securities and Exchange Commission

Form S–20.—Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public———————.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 462A under the Securities Act of 1933, please check the following box.☐

If the registrant elects to deliver its latest annual report to security holders, or a complete and legible facsimile thereof, pursuant to Item 11(a)(1) of this Form, please 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

Form S–2.—General Instructions

I. Eligibility Requirements for Use of Form S–2

Any registrant which meets the following conditions may use this Form for registration of securities under the Securities Act of 1933 ("Securities Act") which are offered or to be offered in any transaction other than an exchange offer for securities of another person:

A. The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

B. 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.

C. The registrant: (1) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule.

D. Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to Section 13(a) or 15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock; or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

E. A foreign private issuer 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.

F. If a registrant is a successor registrant it shall be deemed to have met conditions A., B., C., and D. above if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

G. If a registrant is a majority-owned subsidiary it shall be deemed to have met the conditions of these eligibility requirements 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.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate.

III. Filing of Other Financial Statements in Certain Cases

The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

Part I. Information Required in Prospectus

Item 1. *Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.* Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the

information required by Item 501 of Regulation S–K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.* Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.* Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.500).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.500).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulatioin S–K (17 CFR 229.500).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (17 CFR 229.500).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (17 CFR 229.500).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.500).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

Item 11. *Information with Respect to the Registrant.* Furnish the information required by either paragraph (a) or paragraph (b) of this item. *However,* if the financial statements in the registrant's latest annual report to security holders do not reflect: (1) restated financial statements if there has been a change in accounting principles or a correction of an error where such change or correction requires a substantial retroactive restatement of financial statements, or where a business combination accounted for by the pooling of interest method of accounting has been consummated subsequent to the most recent fiscal year end; or (2) any financial information required because of a material disposition of assets outside the normal course of business, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) below.

(a) If the registrant elects to deliver this prospectus together with its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 or Rule 14c–3, or a complete and legible facsimile of its latest annual report to security holders:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report to security holders.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q (17 CFR 239.308a) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus; or

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report which was delivered to its shareholders and which included the required financial information.

(3) If not reflected in the registrant's latest annual report to security holders, provide the information required by Rules 3–07 and 3–08 of Regulation S–X (17 CFR Part 210) where the registrant has effected or is about to effect a transaction for which such information is required.

(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 certified financial statements were included in the latest annual report to security holders and which were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2)(ii) or (iii) of this item.

(b) If the registrant does not elect to deliver its latest annual report to security holders:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 to be included in annual reports to security holders. The description also should take into account changes in its business which have occurred between the end of the last fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Rule 14a–3(b)(1) to be included in annual reports to security holders as well as any information required by Rules 3–07 and 3–08 of Regulation S–X.

(3) Furnish information relating to industry segments, classes or similar products or services, foreign and domestic operations, and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (17 CFR 229.110).

(4) Where common equity securities are being offered, furnish information required by Item 201 of Regulation S–K (17 CFR 229.200), market price and dividends on the registrant's common stock and related stockholder matters.

(5) Furnish selected financial data required by Item 301 of Regulation S–K (17 CFR 229.200).

(6) Furnish supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300).

(7) Furnish management's discussion and analysis of the registrant's financial condition and results of operations required by Item 303 of Regulation S–K (17 CFR 229.300).

(8) Furnish information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.300).

Item 12. *Incorporation of Certain Information by Reference.* (a) The documents listed in (1), (2), and, if applicable, (3) and (4) below shall be specifically incorporated by reference into the prospectus, by means of a statement to that effect in the prospectus listing all such documents.

(1) The registrant's latest Form 10–K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains certified financial statements for the registrant's latest fiscal year for which a Form 10–K was required to have been filed.

(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 (1) above.

(3) If the registrant elects to deliver its latest annual report to security holders, pursuant to Item 11(a)(1) of this Form:

(i) description of business furnished in accordance with the provisons of Rule 14a–3(b)(5) under the Exchange Act (17 CFR 240.14a–3(b)(5));

(ii) financial statements and information furnished in accordance with the provisons of Rule 14a–3(b)(1);

(iii) information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales furnished as required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (17 CFR 229.100);

(iv) where common equity securities are being offered, market price and dividends on the registrant's common stock and related stockholder matters furnished as required by Item 201 of Regulation S–K (17 CFR 229.200);

(v) selected financial data furnished as required by Item 301 of Regulation S–K (17 CFR 229.300);

(vi) supplementary financial information furnished as required by Item 302 of Regulation S–K (17 CFR 229.300);

(vii) management's discussion and analysis of financial condition and results of operations furnished as required by Item 303 of Regulation S–K (17 CFR 229.300); and

(viii) information concerning disagreements with accountants on accounting and financial disclosure furnished as required by Item 304 of Regulation S–K (17 CFR 229.300).

(4) If the registrant elects, pursuant to Item 11(a)(2)(iii) of this Form, to provide a copy of its latest quarterly report which was delivered to shareholders, the financial information equivalent to that required to be presented in Part I of Form 10–Q.

(b) The registrant may also state, if it so chooses, that specifically described portions of documents which are incorporated by reference are not a part of the registration statement. In such case, the description of portions which are not incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

Part II. Information not Required in Prospectus

Item 13. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.500).

Item 14. *Indemnification of Directors and Officers.* Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.500).

Item 15. *Exhibits.* Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

Item 16. *Undertakings.* furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it meets all of the requirements for filing on Form S–2 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19 ——.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions. 1. 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, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

Instructions as to Summary Prospectuses

1. A summary prospectus used pursuant to Rule 434A (17 CFR 230.434a) shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public;

(b) As to Item 4, a brief statement of the principal purposes for which the proceeds are to be used;

(c) As to Item 7, a statement as to the amount of the offering, if any, to be made for the account of security holders;

(d) As to Item 8, the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; if any securities to be registered are to be offered otherwise than through underwriters, a brief statement as to the manner of distribution;

(e) As to Item 9, a brief statement as to dividend rights, voting rights, conversion rights, interest, maturity;

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done and the selected financial data (Item 301 of Regulation S–K); and

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate.

2. The summary prospectus shall not contain a summary or condensation of any other required financial information except as provided above.

3. The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the inclusion of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for the protection of investors.

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

Securities and Exchange Commission

Form S-1.—Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public ———.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 462A under the Securities Act of 1933, please 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

Form S-1.—General Instructions

I. Eligibility Requirements for Use of Form S–1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political sub-divisions thereof.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the nonfinancial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate.

III. Filing of Other Financial Statements in Certain Cases

The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

IV. Exchange Offers

If any of the securities being registered are to be offered in exchange for securities of any other issuer the prospectus shall also include the information which would be required by Item 11 if the securities of such other issuer were registered on this Form. There shall also be included the information concerning such securities of such other issuer which would be called for by Item 9 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

Part I. Information Required in Prospectus

Item 1. *Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.* Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.* Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover

page, the information required by Item 502 of Regulation S–K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.* Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.500).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.500).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S–K (17 CFR 229.500).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (17 CFR 229.500).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (17 CFR 229.500).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.500).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

Item 11. *Information With Respect to the Registrant.* (a) Furnish the following information with respect to the registrant:

(1) Information required by Item 101 of Regulation S–K (17 CFR 229.100), description of business;

(2) Information required by Item 102 of Regulation S–K (17 CFR 229.100), description of property;

(3) Information required by Item 103 of Regulation S–K (17 CFR 229.100), legal proceedings;

(4) Where common equity securities are being offered, information required by Item 201 of Regulation S–K (17 CFR 229.200), market price of and dividends on the registrant's common stock and related stockholder matters;

(5) Financial statements meeting the requirements of Regulation S–X (17 CFR Part 210) (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 15, Exhibits and Financial Statement Schedules, of this Form), as well as any information required by Rules 3–07 and 3–07 of Regulation S–X;

(6) Information required by Item 301 of Regulation S–K (17 CFR 229.300), selected financial data;

(7) Information required by Item 302 of Regulation S–K (17 CFR 229.300), supplementary financial information;

(8) Information required by Item 303 of Regulation S–K (17 CFR 229.300), management's discussion and analysis of financial condition and results of operations;

(9) Information required by Item 304 of Regulation S–K (17 CFR 229.300), disagreements with accountants on accounting and financial disclosure;

(10) Information required by Item 401 of Regulation S–K (17 CFR 229.400), directors and executive officers;

(11) Information required by Item 402 of Regulation S–K (17 CFR 229.400), management remuneration and transactions; and

(12) Information required by Item 403 of Regulation S–K (17 CFR 229.400), security ownership of certain beneficial owners and management.

Part II. Information not Required in Prospectus

Item 12. *Other Expenses of Issuance and Distribution.* Furnish the information called for by Item 511 of Regulation S–K (17 CFR 229.500).

Item 13. *Indemnification of Directors and Officers.* Furnish the information called for by Item 510 of Regulation S–K (17 CFR 229.500).

Item 14. *Recent Sales of Unregistered Securities.* Furnish the information called for by Item 701 of Regulation S–K (17 CFR 229.500).

Item 15. *Exhibits and Financial Statement Schedules.* (a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (17 CFR 229.600).

(b) Furnish the financial statement schedules required by Regulation S–K (17 CFR Part 210) and Item 11(a)(5) of this Form. These schedules shall be lettered or numbered in the manner described for exhibits in paragraph (a).

Item 16. *Undertakings.* Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on is behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19——.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions. 1. 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 and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

Instructions as to Summary Prospectuses

1. A summary prospectus used pursuant to Rule 434A (17 CFR 230.434a) shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public;

(b) As to Item 4, a brief statement of the principal purposes for which the proceeds are to be used;

(c) As to Item 7, a statement as to the amount of the offering, if any, to be made for the account of security holders;

(d) As to Item 8, the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; if any securities to be registered are to be offered otherwise than through underwriters, a brief statement as to the manner of distribution; and, if securities are to be offered otherwise than for cash, a brief statement as to the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne;

(e) As to Item 9, a brief statement as to dividend rights, voting rights, conversion rights, interest, maturity;

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S–K), and a brief statement of the nature and present status of any material pending legal proceedings; and

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate.

2. The summary prospectus shall not contain a summary or condensation of any other required financial information except as provided above.

3. The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the inclusion of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for the protection of investors.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, prepared in accordance with 5 U.S.C. 603, relates to the reproposal of Forms S–1, S–2 and S–3 to establish a three tier system for the registration of securities under the Securities Act of 1933.

Reason for Proposed Action

For the past two years, the Securities and Exchange Commission (the "Commission") has been making a concerted effort to create a comprehensive integrated disclosure system designed to integrate the formal disclosures made under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"), as well as the informal reports often issued by public companies. This integrated system would streamline corporate disclosure generally, reduce costs, and eliminate much of the overlapping or duplicative reporting now produced. Three new Securities Act registration forms are being reproposed to replace existing forms with ones which are specifically designed to be components of the new integrated disclosure system and to fully utilize the new system to reduce costs and reporting burdens without depriving investors of necessary information. These forms were first proposed on September 2, 1980, and could have been adopted without further comment. However, in order to afford the public the opportunity to consider the various elements of its integrated disclosure system in a comprehensive manner, including the seven other releases being published today, the Commission has decided to republish these forms, as revised, for comment.

Objective

The three proposed new forms are designed to implement the objectives of the Commission's integrated disclosure system. The basic objectives of that integrated system are the reduction of costly and unnecessary duplicative or overlapping disclosures under the three existing disclosure systems and the improvement of disclosure to investors. Form S–3, the most abbreviated of the proposed forms, is available for primary and secondary offerings by companies about which information is widely disseminated and accordingly need not be repeated in the prospectus. In addition, the proposed form would be available for registration of offerings on nonconvertible debt securities which have been rated in one of the top four categories by a nationally recognized statistical rating organization and would be available to any eligible registrant for certain other offerings, such as dividend or interest reinvestment plans. Proposed Form S–2 is a streamlined Form S–7 which gives eligible companies the option of fulfilling part of their Securities Act disclosure obligations by delivery, as part of their prospectus, the annual report to security holders which they prepared for their annual stockholders' meeting. Generally, Form S–2 would be available to companies which have been subject to the reporting provisions of the Exchange Act for three years. Proposed Form S–1 is the most comprehensive form and would be used by all registrants for which no other form is available.

Legal Basis

The Commission is reproposing the new Forms pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act.

Small Entities Subject to Rule

If proposed Forms S–2 and S–3 are adopted, it is believed certain small entities will have their regulatory burdens decreased (the impact of the adoption of proposed Form S–1 on such entities would not appear to be significant). Utilizing the Commission's proposed $2.5 million "small business" parameter,[76] it would appear that less then 850 [77] "small businesses" would be eligible to use Forms S–2 and S–3. Moreover, the number of companies actually impacted would be considerably less as there would only be an effect on those eligible companies which make registered Securities Act offerings of securities in excess of the $5 million limitation of Form S–18. The potential benefit that accrues to an entity would depend upon which form it could use. For the reasons given below under "SIGNIFICANT ALTERNATIVES," very few small entities would be eligible to use Form S–3 except for rights offerings, or offerings of dividend reinvestment plans or certain other restricted types of offerings. To the extent they can use this form, however, its brevity will result in cost savings. Form S–2 would be available to small entities which have been reporting under the Exchange Act for three years or more and which meet certain other requirements. It will result in cost savings to such entities as it is more economical to prepare than its predecessor, Form S–7, and is available to more companies. As pointed out above, Form S–1 is the general form and since few changes are made in it, it would appear to have little impact.

Finally, the Commission is unable to determine the cost savings associated with each use by a small entity of Form S–2 or Form S–3. Accordingly, it concedes for the purpose of this analysis that the impact of the proposal will be significant.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission does not believe that adoption of the new forms would result in any new reporting, recordkeeping or other compliance requirements.

Overlapping or Conflicting Federal Rules

The Commission does not believe any existing rules (or forms) duplicate or conflict with the three proposed new forms.

Significant Alternatives

Since 1978, the Commission has had an ongoing program to facilitate public offerings by small entities. The Office of Small Business Policy, created in 1979, has initiated a number of rule and form changes to accomplish this purpose, such as the adoption of the new abbreviated registration Form S–18 and the adoption Rule 242 which allows unregistered securities sales of up to $2 million per issue in any six month period to an unlimited number of "accredited persons".

However, proposed Forms S–1, S–2, and S–3 are singularly unsuited for such purposes and accordingly minimizing their impact on small entities was not a significant factor in their development. For example, Form S–3 is structured on the concept that certain companies are actively "followed" in the marketplace and therefore a selling document for such a company can be significantly abbreviated without decreasing the data available to investors. As is pointed out in the Release, "following" appears to be closely and directly aligned to factors such as the public float of a company's securities. These factors are generally related to size, *i.e.*, the larger the company, the greater the float and the greater the following. Accordingly, special requirements for small entities could not be considered among the alternatives in drafting Form S–3. At the other end of the spectrum of the three proposed forms is Form S–1. It is the general or "catch-all" form designed to be used when no specialized form is available, such as Form S–3 for large companies and Form S–18 for small offerings. To alter Form S–1 in any manner to accommodate small entities would seriously impair its general applicability and create an overlap with forms such as Form S–18.

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[76] *See* Securities Act Release No. 6302 (March 20, 1981) [46 FR 19251].

[77] This figure is an estimate extrapolated from the data contained in Securities Act Release No. 6302, *id.* n. 75, and Exchange Act Release No. 16666 [June 2, 1980] [45 FR 40145]. However, the actual number eligible would be less as other requirements for use of the forms, such as being a "reporting company" under the Exchange Act for three years or more, would eliminate some of the 850.

Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed forms are adopted. Persons wishing to submit written comments should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7–893 and will be available for public inspection at the Commission's Public Reference Room, Room 6101 1100 L Street, N.W., Washington, D.C. 20549.

Authority

These forms are being proposed pursuant to Section 6, 7, 10 and 19(a) of the Securities Act of 1933.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 206, 209, 48 Stat. 906, 908; secs. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77(s)(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

[FR Doc. 81–23438 Filed 8–13–81; 12:56 pm]

BILLING CODE 8010–01–M

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17 CFR Part 229

[Release Nos. 33–6332; 34–18008; 35–22150; 39–647]

Proposed Revision of Regulation S–K and Proposed Rescission of Guides for the Preparation and Filing of Registration Statements and Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission, in response to public comment, has revised and is republishing for further comment proposals (1) to reorganize and to revise Regulation S–K (the standard instructions for filing forms under the Securities Act and the Exchange Act) (2) to eliminate the Guides for the Preparation and Filing of Registration Statements and Reports, with the exception of the Guides for disclosure by registrants in a particular industry, and (3) to revise and to incorporate into Regulation S–K certain disclosure requirements currently included in the Guides, Regulation C (rule governing the preparation and filing of registration statements under the Securities Act) and certain requirements originally proposed to be included in Securities Act registration statement Forms A, B and C (today reproposed as Forms S–3, and S–1). The proposals represent the conclusion of the "sunset" review of the Guides and an expansion of Regulation S–K as the repository for content requirements for disclosure documents filed with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934. The republishing of these and related proposals is intended to afford the public an opportunity to consider in a comprehensive manner the various elements of the Commission's integrated disclosure system, in which Regulation S–K plays a central role.

DATE: Comments should be received on or before October 30, 1981.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7–894. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Linda C. Quinn (202) 272–2589 or Robert Pincus (202) 272–3289, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In response to public comment, the Commission today is republishing for further comment proposals to reorganize and to revise Regulations S–K [17 CFR 229] [1] and to incorporate certain disclosure requirements currently included in (1) the Guides for the Preparation and Filing of Registration Statements and Reports ("Guides") under the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended] ("Securities Act") and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended] ("Exchange Act"), (2) Regulation C [17 CFR 230.400 through 230.494] under the Securities Act ("Regulation C"), and (3) proposed Securities Act registration statement Forms A, B and C,[2] today reproposed as Forms S–3, S–2 and S–1,[3] respectively. This Release also proposes the rescission of all the Guides, other than those relating to specific industries ("Industry Guides"), as part of the Commission's "sunset" review of its disclosure rule.[4]

This Release proposes further reorganization of Regulation S–K and substantial revisions in the disclosure requirements proposed in the ABC and Guides Release. Less substantive revisions also are proposed to current Regulation S–K Items, most of which are for purposes of clarification or reorganization. The Release highlights the material substantive changes; reference should be made to the text of the proposal for all the changes proposed.

As proposed today, Regulation S–K will be the repository of substantially all requirements relating to the information to be set forth in registration statements and annual reports required pursuant to the Securities Act and the Exchange Act. There are two principal exceptions to this centralization of content requirements. First, the Industry Guides will retain their guide status and are proposed to be listed in Section 800 of Regulation S–K. Secondly, there will remain certain Forms that will not incorporate Regulation S–K at all. These forms are those applicable to a single class of securities or registrants that the Commission has determined are sufficiently unique as to require significantly different disclosure from that specified in Regulation S–K. Currently, Forms S–12 and S–18 fall into this category.

Proposed Regulation S–K is one of eight rulemaking proposals that are being published or republished for comment today. These proposals include: (1) a three tier system for the registration of securities, Forms S–1, S–2, and S–3 (originally denominated for comment purposes as Forms C, B and A, respectively);[5] (2) amendments to Regulation C and Regulation 12B under the Exchange Act [17 CFR 240.12b–1 et seq.] to simplify and to clarify procedural requirements, thereby commencing the Commission's "sunset" review of Regulation C;[6] (3) a new rule governing registration of securities to be sold in a continuous or delayed

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[1] Proposed in Securities Act Release No. 6276 (December 23, 1980) [46 FR 78] (the "Guides Release").

[2] Proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693] (the "ABC Release").

[3] Proposed in Securities Act Release No. 6331 (August 6, 1981).

[4] At the time of adoption of the proposed revision of Regulation S–K, Securities Act Release No. 4936 (Dec. 9, 1968) [33 FR 18617], Securities Exchange Act Release No. 10961 (August 14, 1974) [39 FR 31894] and subsequent related releases adopting or modifying the Guides will be rescinded and the Industry Guides will be renumbered and readopted by separate release.

[5] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in the ABC Release.

[6] Securities Act Release No. 6333 (August 6, 1981), ("Regulation C Release").

offering;[7] (4) a rule relating to the responsibility of underwriters and others in an integrated disclosure system;[8] (5) a statement of the Commission's policy with respect to the disclosure of security ratings;[9] and (6) amendments to other Securities Act registration Forms [10] and certain Exchange Act forms and schedules [11] to incorporate the new Regulation S–K provisions and to make other technical changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as a continuation of the Commission's "sunset" review of all its disclosure rules and regulations under both Acts.

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 amendments proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this Release.

I. Background

On December 23, 1980, the Commission issued the Guides Release in which it proposed for comment the rescission of all but the Industry Guides,[12] the deletion of the substance of those Guides that were outdated or otherwise inappropriate, and the incorporation into Regulation S–K of the substance of the remaining Guides relating to disclosure requirements. The substance of the remaining Guides relating to procedural matters were proposed to be incorporated into Regulation C and the General Rules under the Securities Act and Exchange Act. The Guides Release also proposed a reorganization of Regulation S–K by subject matter and the incorporation therein of certain disclosure requirements from Securities Act registration statement Forms A, B and C, as proposed in the ABC Release. A total of 41 letters of comment were submitted in response to the Guides Release.[13]

These proposals represented the Commission's first major step in implementing the recommendation of the Advisory Committee on Corporate Disclosure of the Securities and Exchange Commission ("Advisory Committee") [14] that the Commission undertake a periodic re-evaluation of all of its outstanding rules and regulations to "keep the disclosure requirements current and effective and prevent the development of an encrusting layer of unnecessary and irrelevant information." [15] The Guides Release, issued after consideration of comments received in response to the concept release announcing the re-evaluation of the Guides and soliciting suggestions as to those that were no longer necessary or appropriate,[16] proposed the withdrawal of 22 of the existing Guides and the incorporation with little change of the remaining Guides, except the Industry Guides, into the Commission's rules and regulations. Recognizing the desirable flexibility that guide status provides in the case of the particularized Industry Guides, the Commission proposed to leave these items as guidelines to disclosure, rather than formal requirements.

As reproposed today, eight additional Guides are to be withdrawn as unnecessary:

Guide 1—Pre-filing conferences with registrants.

Guide 12—Over-the-counter trading in rights or warrants.

Guide 14—Underwriters' compensation from conversion of funds into foreign currency.

Guide 36—Effect of issuance of options or warrants to certain persons.

Guide 43—Representations from selling security holders.

Guide 45—Information as to over-the-counter market for securities to be registered.

Guide 49—Revision of prospectuses where a company and its employee plan have different fiscal years.

Guide 59—Summary of disclosure in the prospectus.

At the suggestion of certain commentators, limited provisions of Guides 9 [Promoters] and 31 [Disclosure of recent developments—Backlog]. Guides originally proposed to be eliminated in their entirety, are now proposed to be incorporated into Rule 405 [Definition of terms] of Regulation C and proposed Item 101 [Description of business] of Regulation S–K. The proposed addition of these two provisions is for purposes of clarification and would not impose additional disclosure or procedural burdens on registrants.

Integral to the "sunset" review of the Guides and the proposed revision of the Securities Act registration system is the amendment of Regulation S–K to accommodate the incorporation of the substance of the disclosure Guides and standard disclosure items with respect to the distribution of securities. The resulting increase in the number of disclosure items in Regulation S–K made clear the need for a reorganization of the Regulation.

II. Overview of Regulation S–K

The proposed rescission of the Guides and the related revisions of Regulation S–K, Regulation C and the General Rules met with the general approval of the commentators. Most of the changes to Regulation S–K originally proposed in the Guides Release are being reproposed with some modification, in many cases to reflect the suggestions of the commentators. Further changes are being proposed today, some to consolidate in Regulation S–K additional content requirements currently in Regulation C and various Securities Act forms, and others to simplify and to clarify existent Regulation S–K Items.[17]

When initially adopted in 1977, Regulation S–K was intended to be the repository of standard issuer-related disclosure requirements that would be used in multiple forms to be filed under both the Securities Act and the Exchange Act. Over the three and one-half years since its adoption, the Regulation has been evolving into a centralized source of all content requirements for periodic reports and registration statements, including, as noted in the ABC Release, requirements addressing special circumstances and industries not uniformly applicable. The Commission has recognized that, in addition to serving as the central tool of integration through its application of standardized issuer-related disclosure provisions to both Securities Act and Exchange Act documents, Regulation S–K also can serve to simplify registrants'

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[7] Securities Act Release No. 6334 (August 6, 1981). Originally proposed as part of the Guides Release.

[8] Securities Act Release No. 6335 (August 6, 1981).

[9] Securities Act Release No. 6336 (August 6, 1981).

[10] Securities Act Release No. 6337 (August 6, 1981).

[11] Securities Exchange Act Release No. 18014 (August 6, 1981).

[12] *See* Guides Release.

[13] A copy of the summary of the comments to the Guides Release, which summary was prepared by the staff of the Commission, has been placed in File No. S7–869 and is available for inspection and copying.

[14] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95–29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) ("Advisory Committee Report").

[15] Advisory Committee Report at 338.

[16] Securities Act Release No. 6163 (December 5, 1979) [44 FR 72604].

[17] The changes to Regulation C and the General Rules, including a discussion of the Guides incorporated therein, are the subject matter of the Regulation C Release and will not be addressed herein. There is, however, set forth at the end of this Release a table indicating the proposed disposition of the substance of each of the 63 Securities Act Guides and the 5 Exchange Act Guides.

preparation of documents by consolidating other nonissuer-related content requirements into a single Regulation, rather than leaving registrants to sort through various regulations, forms, rules and releases to determine the requirements applicable to the content of a particular filing. Examples of this consolidation are the initial proposal in the Guides Release to incorporate Items in Regulation S-K relating to the distribution of securities that are applicable only to Securities Act documents, and the expansion proposed today of such Items to include various legends, currently required by Regulation C, and undertakings, now dispersed throughout the Securities Act Forms and Regulation C.

As proposed herein Regulation S-K would consist of nine major sections.

General. This section of the Regulation does not contain mandated disclosure requirements. It simply outlines the content of Regulation S-K and its potential application and states the Commission's policy with respect to projections that registrants choose to include in filings with the Commission. While Regulation S-K does not mandate disclosure in any filing, as an Item of the Regulation is applicable only where the Form or Schedule on which the filing is made directs the inclusion of the information specified in the particular Item, the statement of the Commission's Policy on Projections is applicable to all filings with the Commission under the Securities Act and Exchange Act, whether or not Regulation S-K is referenced specifically in the Form or Schedule on which the filing is made. The policy's location in Regulation S-K is part of the effort to consolidate disclosure related items into a single regulation.

The Commission Policy on Projections, initially proposed as a separate Item, is proposed to be moved to this General section to reemphasize that disclosure of projections continues to be discretionary with registrants and is not a mandated disclosure Item. Notwithstanding the Commission's statements to the contrary in the Guides Release, a number of commentators voiced concern that inclusion of the Commission Policy on Projections in Regulation S-K was the Commission's first step toward mandating such disclosure. The issue of mandatory projections was fully explored by the Commission only three years ago.[18] While continuing to encourage the disclosure of forward looking information consistent with this policy, the Commission still believes that such disclosure should be solely in the discretion of registrants and should not be mandated.

Business. This section of the Regulation would continue to contain the three Items proposed in the Guides Release: Description of Business, Description of Property, and Legal Proceedings, currently Items 1, 2, and 5 of Regulation S-K, respectively.

Securities of the Registrant. Substantial changes have been made to this section from that proposed in the Guides Release. The two Items comprising the section are amalgams of Items 30 [Market price of the registrant's common stock and related security holder matters], currently Item 9 of the Regulation, and 45 [Securities to be registered], initially proposed in separate sections of the Regulation. The duplicative provisions of these two Items have been eliminated, with the common equity dividend and market information located in Item 201 [Market price of and dividends on the registrant's common stock and related stockholders matters] and the description of the securities in Item 202 [Description of securities]. The separation of the market and dividend information from the description of the terms of the securities reflects the usual presentation of such disclosure in filings and also places in a single Item that information with respect to registrants' securities which is required in the Form 10-K and the annual report to security holders required by Rule 14a-3 or Rule 14c-3 ("annual report to security holders"). Market information with respect to noncommon equity securities is proposed to be retained in Section 202 to cover the less frequent situations where there is an established public trading market for the preferred stock or debt being registered. The inclusion of this requirement in Item 202 simply reflects an organizational judgment that it would be preferable not to include in Item 201 requirements inapplicable to the Form 10-K or annual report to security holders. The location in the filed document of the market disclosure for these noncommon equity securities is expected to be comparable to that for common equity.

Financial Information. The only change proposed in the composition of this section is the result of the deletion from the Supplementary Financial Information Item, currently Item 12 of Regulation S-K, of paragraph (b) [Disagreements on accounting and financial disclosure matters], and its relocation as a separate Item of this section. The Financial Information section now contains the three Items originally proposed in the Guides Release: Selected Financial Information, Management's Discussion and Analysis of Financial Condition and Results of Operations, and Supplementary Financial Information, currently Items 10, 11 and 12 of Regulation S-K, respectively, plus a new Item, Disagreements with Accountants on Accounting and Financial Disclosure.

Management and Certain Security Holders. This section is proposed to be expanded from that proposed in the Guides Release to include the Item Security Ownership of Certain Beneficial Owners and Management (currently Item 6 of Regulation S-K), in addition to the Directors and Executive Officers and the Management Remuneration and Transactions Items, currently Items 3 and 4 of Regulation S-K, respectively. This places into a single section of the Regulation the three Items that are required in most proxy statements and that may be incorporated by reference from the proxy statement or the Form 10-K report into other filings.

Registration Statement and Prospectus Provisions. This section proposes an adaptation of the "Distribution of Securities" section set forth in the Guides Release. Unlike the other sections of Regulation S-K that are used in both Securities Act and Exchange Act documents, this section specifies content requirements applicable only to Securities Act registration statements, including, as noted above, all requisite legends and undertakings.

The Items, reorganized to mirror more closely the usual format of a registration statement, include:

Forepart of Registration Statement and Outside Front Cover Page of Prospectus;
Inside Front and Outside Back Cover Pages of Prospectus;
Summary Information and Risk Factors;
Use of Proceeds;
Determination of Offering Price;
Dilution;
Selling Security Holders;
Plan of Distribution;
Interests of Named Experts and Counsel;
Indemnification of Directors and Officers;
Other Expenses of Issuance and Distribution; and Undertakings.

Exhibits. As proposed herein this section continues to consist of the same single Item, currently Item 7 of Regulation S-K, proposed in the Guides Release.

[18] Securities Act Release Nos. 6084 [June 25, 1979] [44 FR 38810] and 5992 [November 7, 1978] [43 FR 53246].

Miscellaneous. As proposed in the Guides Release this section contained three Items that now are proposed to be located in other sections of the Regulation. Item 701 [Recent sales of unregistered securities], originally proposed as a "Distribution of Securities" requirement, has been moved to this section in view of its use in Form 10 under the Exchange Act, as well as in Securities Act registration statement forms.

List of Industry Guides. This new section proposes to locate a current list of applicable Industry Guides in close proximity to Regulation S–K as published in the Code of Federal Regulations. The Commission also intends eventually to include as a section of Regulation S–K a list of currently effective interpretative releases applicable to those disclosure documents that incorporate the requirements of Regulation S–K.

III. Table of Proposed Revisions of Regulation S–K

A table of the proposed revisions of Regulation S–K follows. The table shows the number and caption of the proposed Item, the derivation of the Item and the forms and schedules that would refer to the disclosure requirements of a particular Item. Where Items are indicated to have been derived from existing registration statement forms, the proposed Items, in most cases, reflect some modification of existing requirements. The proposed numbering system is intended to permit future amendment of the Regulation without significant renumbering of existent Items.

Included in both the following table and the proposed text of Regulation S–K are several previously proposed amendments to the Regulation. The table and the Regulation specifically note where such proposals are reflected. These amendments are being reproposed without change so that commentators may consider them in the context of the proposed amendments to the integrated disclosure system. Comments already received on these amendments will be considered; it is unnecessary for commentators to repeat or to resubmit their comments with respect to these proposals.

Table A—*Proposed Revision of Regulation S–K*

Proposed S–K Item	Source					Guide	Rule	Application
	Originally proposed in Guides Release as S–K item	Existing S–K item	Outstanding proposals release No.	Securities Act Forms				Forms and schedules to be affected
				Proposed	Current			
§ 229.001—General:								
(a) Subject matter								
(b) Application	§ 229.01	§ 229.01						
(c) Commission policy on projections	52					62, 5 of Exchange Act Guides.		All forms, Regulations and Schedules under the Securities Act and §§ 13, 14, and 15 of the Exchange Act.
§ 229.100—Business:								
101. Description of business								S–1, S–2, 10, 10–K.
(a) General development of business.	1(a)	1(a)						
(b) Financial information about industry segments.	1(b)	1(b)						S–14, Sch. 14A/C, A.R.S., Sch. 13E–4.
(c) Narrative description of business.	1(c)	1(c)				31		S–14, Sch. 14A/C, A.R.S., Sch. 13E–4.
(d) Financial information about foreign and domestic operations and export sales.	1(d)	1(d)						S–14, Sch. 14A/C, A.R.S., Sch. 13E–4.
102. Description of property								S–1, 10, 10–K.
(a) General	2(a)	2(a)						
(b) Oil and gas operations	2(b)	2(b)						
103. Legal proceedings	3	5	33–6315					S–1, S–11, S–14, 10, 10–K, 10–Q, Sch. 14A/C.
§ 229.200—Securities of the registrant:								
201. Market price of and dividends on the registrant's common stock and related stockholder matters.								S–1, S–2, S–11, S–14, S–15, 10, 10–K, A.R.S., Sch. 13E–4.
(a) Market information	30(a), 45(e)	9(a)				13		
(b) Holders	30(b)	6, (Instr. 7), 9(b)						
(c) Dividends	30(c), (d), 45(a)(9), 45(a)(10).	9(c), (d)						
202. Description of registrant's securities:						52		S–1, S–2, S–3, S–8, S–11, 8–A, 8–B, 10, 12.
(a) Capital stock	45(a)			A(6)	S–1(13), S–7(7), S–16(6a).	32		
(b) Debt securities	45(b)			A(6b)	S–1(14), S–7(8), S–16(6b).	18		
(c) Warrants and rights	45(c)			A(6c)	S–1(15), S–7(9), S–16(6c).			
(d) Other securities	45(d)			A6(d)	S–1(15), S–7(9), S–16(6d).			
Instructions						33	406	
§ 229.300—Financial information:								
301. Selected financial data	10	10	33–6285					S–1, S–2, S–11, S–15, 10, 10–K, A.R.S., Sch. 13E–4.
302. Supplementary financial information.	11(a), (c)	12(a), (c)						S–1, S–2, S–11, S–14, S–15, 10, 10–K, Sch. 14A/C, A.R.S., Sch. 13E–4.
303. Management's discussion and analysis of financial condition and results of operations.	12	11						S–1, S–2, S–11, S–14, S–15, 10, 10–K, 10–Q, Sch. 14A/C, A.R.S., Sch. 13E–4.

Table A—*Proposed Revision of Regulation S-K*—Continued

Proposed S-K item	Source: Originally proposed in Guides Release as S-K item	Source: Existing S-K item	Source: Outstanding proposals release No.	Source: Securities Act Forms: Proposed	Source: Securities Act Forms: Current	Guide	Rule	Application: Forms and schedules to be affected
304. Disagreements with accountants on accounting and financial disclosure.	11(b)	12(b)						S-1, S-2, S-11, S-14, S-15, 10, 10-K, Sch. 14A/C A.R.S., Sch. 13E-4.
§ 229.400—Management and certain security holders:								
401. Directors and executive officers	20	3						S-1, S-11, S-14, S-15, 10, 10-K, 14A/C.
402. Management remuneration and transactions.								S-1, S-11, S-14, 10, 10-K, Sch. 14A/C.
(a)–(g), (i)	21	4	34-17517			63		
(b) Transactions with promotors					S-1(11)			
§ 229.500—Registration statement and prospectus provisions:								
403. Security ownership of certain beneficial owners and management.	31	6	34-17517					S-1, S-11, S-14, S-15, 8-K, 10, 10-K, Sch. 14A.C.
§ 229.500—Registration statement and prospectus provisions:								
501. Forepart of registration statement and front cover page of prospectus.	40			A-1, B-3	S-7(1)	5, 7, 15, 54	404(c), (d), 425, 433(b).	S-1, S-2, S-3, S-8, S-11, S-14, S-15.
502. Inside front and outside back cover page of prospectus.								S-1, S-2, S-3, S-8, S-11, S-14, S-15.
(a) Available information	50			A-(7d and e), B (8b and c), C-8	S-7(12a, b), S-16(8c).			
(b) Reports to security holders						48		
(c) Incorporation by reference				A-7(c), B-8(d), C-8(a)	S-16(8d)			
(d) Stabilization							426	
(e) Delivery of prospectuses by dealers.							425(a)	
(f) Enforceability of civil liabilities against foreign persons.	41(j)					47		
(g) Table of contents							421(c)	
503. Summary information and risk factors.								S-1, S-2, S-3, S-8, S-11, S-14.
(a) Summary	41			A(2)		59		
(b) Address and telephone number	41(e)					58		
(c) Risk factors	41(g)					5, 6		
504. Use of proceeds	43			A(4)	S-1(3)	21		S-1, S-2, S-3, S-11.
505. Determination of offering price								S-1, S-2, S-3, S-11.
(a) Common stock	45(a)(8)							
(b) Warrants, rights and convertible securities.	45(c)(6)							
506. Dilution	42(k)					6		S-1, S-2, S-3, S-11.
507. Selling security holders	44			A-(5)	S-16(4)			S-1, S-2, S-3, S-11.
508. Plan of distribution								S-1, S-2, S-3, S-11.
(a) Underwriters and underwriting obligation.	42(a)			A(3a)	S-7 (2a), S-16(3a).			
(b) New underwriters	42(e)					16		
(c) Other distributions	42(c)			A(3c)	S-7(2c), S-16(3c).			
(d) Offerings on exchange	42(d)			A(3d)	S-16(3d)			
(e) Underwriters' compensation	42(f)					5, 17		
(f) Underwriter's representative on board of directors.	42(f)(5)					35		
(g) Indemnification of underwriters.	48(c)					46(b)		
(h) Dealers' compensation	42(b)			A(3b)	S-7(2b), S-16(3b).			
(i) Finders and promoters	42(h)					11		
509. Interest of named experts and counsel.	47			A(10)	S-1(23)	56		S-1, S-2, S-3, S-8, S-11, S-14, S-15.
510. Indemnification of directors and officers.				A(11)	S-7(15)			S-1, S-2, S-3, S-8, S-11, S-14, S-15, 10.
(a) Description of indemnification provisions.	48 (a) and (b)							
(b) Disclosure of Commission position on indemnification for Securities Act liabilities.	48(d)					46		
511. Other expenses of issuance and distribution.	46			A(9)	S-7(13), S-16(9).	15		S-1, S-2, S-3, S-11.
512. Undertakings								S-1, S-2, S-3, S-8, S-11, S-14, S-15.
(a) Rule 462A					S-7, S-11, S-16.			
(b) Filings incorporating subsequent Exchange Act documents by reference.					S-8, S-16			
(c) Warrants and rights offerings					S-1, S-7, S-11, S-16.			
(d) Competitive bids					S-1, S-7		415	
(e) Incorporated annual and quarterly reports.				B(15d)	S-15			
(f) Employee plans on Form S-8					S-8			

Table A—*Proposed Revision of Regulation S-K*—Continued

Proposed S-K item	Source					Guide	Rule	Application
	Originally proposed in Guides Release as S-K item	Existing S-K item	Outstanding proposals release No.	Securities Act Forms				Forms and schedules to be affected
				Proposed	Current			
(g) Equity offerings of nonreporting issuers					S-1, S-2			
(h) Registration on Forms S-14 or S-15 of securities offered for resale					S-14, S-15			
(i) Acceleration of effectiveness							Note to 460	
§ 229.600—Exhibits:								
601. Exhibits	51		7					S-1, S-2, S-3, S-8, S-11, S-14, S-15, 10, 8-K, 10-K, 10-Q.
(a) Exhibits and index required							403 (d), (e), 446, 472(d).	
(b) Description of exhibits			33-6285	A(7b)		38, 39	402(c), 428, 445.	
§ 229.700—Miscellaneous:								
701 Recent sales of unregistered securities.	49			C(14)	S-1(25)			S-1, S-11, 10.
§ 229.800—List of industry guides						30, 55, 57, 60, 3 or Exchange Act Guides.		

IV. Synopsis of proposals

There follows a brief overview of the changes proposed to be made to existing Items of Regulation S-K and those proposed in the ABC and Guides Releases. The discussion highlights the material substantive changes; reference should be made to the text of the proposal for a complete review of all changes proposed.

Subject Matter of Regulation S-K

This paragraph is proposed to provide a table of contents for the Regulations as published, in the Code of Federal Regulations.

Application of Regulation S-K

No substantive change is proposed.

Commission Policy on Projections

No substantive change is proposed to be made to the policy. The determination not to change the policy to limit the maximum period for projections disclosed without assumptions or to make any other substantive changes in the policy is in accord with the consensus of the commentators responding to the Commission's inquiry as to the need for such changes. Reference to the "Division" has been changed to refer to the Commission, to be consistent with the transfer of the policy into Regulation S-K.

Item 101. *Description of Business.* No substantive changes to the disclosure required by current Item 1 of Regulation S-K are proposed. Most of the changes reflect a reorganization of the Item to read and to reference more easily. Paragraph (b) of the Item and Appendix A reflect proposed changes to correct an error made in the adoption of revisions to these provisions in September 1980; the text of the September revisions inadvertently dropped certain requirements with respect to disclosure of intersegment sales or transfers.[19] The paragraph and Appendix are proposed to be revised to make clear that, as required under Statement of Financial Accounting Standards No. 14—Financial Reporting for Segments of a Business Enterprise, intersegment sales or transfers are to be separately stated.

Paragraphs 1(c)(1)(vii) and 1(c)(2)(ii) of the current Item 1, concerning significant customers, are proposed to be consolidated into paragraph (c)(1)(vii) of Item 101. The new paragraph also makes explicit the previously implicit materiality standard with respect to the disclosure of a segment's dependence upon a single customer or group of customers. In response to the suggestion of a commentator, language from Guide 31 [Disclosure of recent developments-backlog], indicating the permissible disclosure of government orders as backlog, has been added to paragraph (c)(1)(viii) of Item 101. The instruction to paragraph (c)(1)(ii) of current Item 1 relating to submission to the staff of supplemental information relating to new products or business is proposed to be deleted and its substance to be incorporated into proposed Rule 419 [Supplemental informational] of Regulation C.

Item 102. *Description of Property.* As the Commission has under consideration the entire area of oil and gas disclosure, it has determined to leave the Item substantially as it is at this time. Because the substance of paragraph (b) of Item 102, relating to the specific requirements for oil and gas enterprises is complex and industry-specific, the Commission is considering whether to delete it from Item 102 and to issue it as an Industry Guide. The Commission also is considering the possibility of permitting disclosure of less than proven or probable reserves with appropriate discussion. The Commission invites specific comment on these possible changes in oil and gas disclosure. It should be noted that in the interim, Instruction 4 to paragraph (b) of Item 2, relating to reserve disclosure, is proposed to be moved to new Instruction 5 to paragraph (a) and to be modified to reflect present Commission practice. As proposed to be revised, the Instruction would indicate the policy with respect to other extractive reserves, as well as oil and gas reserves, stating that except where it is shown to the staff of the Commission that reserves other than proven oil and gas reserves and proven or probable extractive reserves are required to be disclosed in the filing by foreign law or that the deletion of such reserve disclosure would render the document materially misleading, only proven oil and gas reserves and proven or probable extractive reserves may be publicly disclosed in a filing with the Commission. These limited exceptions are consistent with present staff practices. It should be noted that reliance on such exceptions will continue to require prior consultation with the Commission's staff.

The other changes proposed to the Item include a reorganization of the introduction and notes to paragraph (b) and a revision of paragraph (b) to call for three year information, rather than

[19] Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630].

the five years currently required. The latter change is intended to conform the Item to the recent changes made in Regulations S–K and S–X [17 CFR 210] to require three year segment information and income statements.[20]

Item 103. *Legal Proceedings.* The Item reflects amendments regarding disclosure of certain enviromental proceedings proposed in Securities Act Release No. 6315 (May 4, 1981) [46 FR 25638]. No other substantive change is proposed.

Item 201. *Market Price of and Dividends on Registrant's Common Stock and Related Stockholders Matters.* Item 201 is a combination of provisions from Items 30 [Market price of the Registrant's common stock and related security holder matters] (currently Item 9 of Regulation S–K) and 45 [Securities to be registered] proposed in the Guides Release. The principal substantive changes from the earlier proposals are (1) a limitation of the required market and dividend information to common equity and securities convertible into common equity rather than all equity securities (note, however, proposed paragraph (e) of Item 202), (2) the addition of requirements regarding disclosure of foreign markets for and market prices therein of the common equity of foreign registrants, (3) the codification of current practices with respect to inclusion of market price information as of the latest practicable date and disclosure of the nature of over-the-counter price information; (4) the revision of the periods for which dividend and market price disclosure is required to two fiscal years, plus the subsequent interim period for which financial information is required to be presented (5) a refocusing of the "market overhang" disclosure from the impact of the overhang to the extent of the overhang, and a redefining of such overhang, (6) the modification of the requirements concerning dividend restrictions to clarify a registrant's obligation to discuss, where appropriate, restrictions on the transfer of funds to the registrant through dividends, loans or advances from its subsidiaries, and (7) a clarification of the mandated description of dividend limitations to require disclosure only of those restrictions that currently, or that are reasonably expected to, limit materially the amount of dividends paid on the registrant's common equity.

This last proposed change is intended to require disclosure where the payment of dividends will be, or reasonably is expected to be, materially limited in amount. Thus, for example, where a dividend restriction imposed by State statute would limit the payment of the registrant's usual dividend or preclude the payment of any dividend, currently or in the foreseeable future, the statutory restriction would have to be disclosed pursuant to this Item. On the other hand, for example, where a registrant is subject to dividend restrictions in an indenture but the usual amount and rate of dividends can be paid currently and for the foreseeable future, the restriction need not be described pursuant to this Item notwithstanding a restriction of a portion of the registrant's retained earnings (although such restriction generally would be required to be disclosed pursuant to proposed Item 202 of Regulation S–K, as well as in the registrant's financial statements).

Proposed paragraphs (a)(2) and (a)(3) of Item 201 reflect a substantive revision in the concept of "market overhang." Unlike Item 45(e), proposed in the Guides Release, Item 201 distinguishes between common equity not publicly traded and common equity for which there is an established public trading market. In the case of the former, paragraph (a)(2) would require disclosure concerning common equity (1) issuable pursuant to outstanding options, warrants or convertible securities, (2) held by affiliates or constituting restricted stock for Rule 144 purposes, and/or (3) that the registrant may register, pursuant to registration rights or otherwise, where the sale of such securities could materially affect the market price of the common equity securities. The Commission believes these are the probable significant sources of common equity that generally would not have been able to be freely traded prior to the public offering because of a lack of an established public trading market, and therefore could be expected to be sold when and as such a market developed. In addition, paragraph (a)(2) would require disclosure of current or publicly proposed offerings by the registrant that could have a material impact on the market price of the registrant's common equity. With respect to common equity for which there is an established public trading market, paragraph (a)(3) would require disclosure of certain offerings under Rule 462A of Regulation C that are registered or in the process of registration, offerings publicly proposed to be made by the registrant, and all secondary offerings that the registrant knows or reasonably expects will be registered under the Securities Act in the proximate future, which offerings are of a size that could reasonably be expected to affect materially the market price of the registrant's common equity. The Commission proposes to limit the specific requirements of paragraph (a)(3) to registered offerings as the provisions of Rule 144 [17 CFR 230.144] under the Securities Act generally should prevent sales made pursuant to this Rule from having a material market impact where there has been a previously established public trading market. In addition to the specific requirements of Item 201, registrants generally are required to disclose any other offerings which they know will, or reasonably expect to, occur in the proximate future, that would have a material adverse effect on the market price of their common equity.

It should be noted that the information required by Item 201, including the market overhang information, is proposed to be required in the Form 10–K report and the annual report to security holders, as well as in Securities Act and Exchange Act registration statements. The Commission believes that this information is equally as important to investors buying and selling in the secondary trading markets as it is to purchasers in a primary offering.

Proposed paragraph (b)(2) of Item 201, relating to the effect of acquisitions, business combinations or other reorganizations on security holdings, is currently Instruction 7 to Item 6 of Regulation S–K. The relocation of the substance of the Instruction into Item 201 is necessary because the information otherwise required by Item 6 (proposed Item 403) is proposed to be incorporated by reference in certain Securities Act registration statements, and therefore a requirement triggered by a filing under the Securities Act would not elicit this information.

A new Instruction 5 is proposed to be added to Item 201 to make clear that the requirements apply with respect to all common equity interests, whether designated common stock or otherwise.

Item 202. *Description of Registrant's Securities.* Proposed Item 202 is essentially a reorganization of Item 45 [Securities to be registered], proposed in the Guides Release, omitting the common equity dividend and market information requirements now included in proposed Item 201. Additional substantive changes proposed to the Item as published in the Guides Release include:

(1) The addition of the introductory note to include the substance of Guide 52 [Disclosure as to listing on an exchange];

[20] Accounting Series Release No. 279 (September 2, 1980) [45 FR 63630].

(2) The revision of paragraph (a)(1)(viii), relating to disclosure of shareholder liabilities for corporate debts, to permit factors other than financial condition as a basis for nondisclosure;

(3) The deletion, as unnecessary, of the substance of that part of Guide 39 [Charter amendments authorizing new securities] pertaining to disclosure regarding not yet effective charter amendments to authorize the securities to be registered, originally proposed to be included in Item 45(a)(7);

(4) The relocation into Item 505 [Determination of offering price] of the requirement regarding the disclosure of the basis for determination of the offering price of common equity in certain cases, originally proposed as paragraph (a)(8) of Item 45 [Securities to be registered], and the requirement regarding the basis for the determination of the exercise price of warrants, options and convertible securities, exercisable for such common equity, originally proposed as paragraph (c)(6) of the same Item;

(5) The deletion of Guide 12 [Over-the-counter trading in rights or warrants] requirements relating to the basis for trading of warrants and rights, originally proposed to be included in Item 45(e)(1)(iv)(B); the Commission believes the matter to be covered adequately by Section 61 of the Uniform Practice Code of the National Association of Securities Dealers ("NASD");

(6) The relocation of the substance of Rule 406 of Regulation C [17 CFR 230.406], regarding the appropriate title for a security, into Instruction 1 to Item 202;

(7) The revision of proposed paragraph (b)(9) requiring the disclosure of certain "original issue discounts" to omit the requirement to quantify the amount of such discount in view of a commentator's advice that in many cases such discount cannot be computed until after the effective date; and

(8) The addition of paragraph (e) to require market information for securities (other than common equity) to be registered where there already exists an established public trading market for such securities.

In response to substantial negative comment, two further changes are proposed to Item 202. The commentators felt that the items listed in the Guides Release as antitakeover devices in paragraph (a)(5), relating to activities that might affect changes in control of the registrant, were not only unclear but in a number of cases could be read to require inaccurate characterization of common corporate activities that in many instances have no antitakeover purpose and only a theoretical impact on changes of control. After consideration of these concerns, the Commission proposes to narrow the scope of the arrangements and provisions required by paragraph (a)(5) to be disclosed to those that in most cases should be expected to affect materially possible changes in control. Proposed paragraph (a)(5) also has been clarified to make clear that the restrictions are those created by the registrant, and that disclosure is not required of those provisions required by law. The proposal also omits the requirement, proposed in the ABC Release, of an opinion of counsel as to the enforceability of such arrangements and provisons in view of the substantial difficulties cited by the commentators in providing a meaningful opinion on these matters.

The second provision subject to significant comment was the requirement, proposed to have been included in the prospectus summary (Item 41 in the Guides Release), to disclose the amount of indebtedness senior to that being registered. This requirement has been moved to paragraph (b)(3) of Item 202 and has been modified, consistent with current practice, to apply only to debt designated as subordinated. It should be noted in this regard that current Rule 406 [17 CFR 230.406] of Regulation C (proposed Instruction 1 to Item 202) would require such designation. The paragraph makes clear that the definitions used in the instruments governing such indebtedness will determine the requisite disclosure. The Commission believes that these modifications alleviate the definitional problems raised by the commentators.

Item 301. *Selected Financial Data.* Amendments relating to the preparation of the ratio of earnings to fixed charges proposed in Securities Act Release No. 6285 (Feb. 6, 1981) [46 FR 12756] account for most of the changes reflected in the Item (current Item 10 of Regulation S-K). Two additional changes of note are new Instruction 2 to require disclosure of a qualified auditor's report and new Instruction 6 to make clear that the general requirement of five year information does not change the registrant's general disclosure obligation to update trend information for material changes.

Item 302. *Supplementary Financial Information.* The principal changes to this Item (current Item 12 of Regulation S-K) are structural. Paragraph (a) is proposed to be reorganized for clarification purposes and the reference to obligations of foreign private issuers required to file Form 6-K has been deleted consistent with present staff practice.

The Commission also notes with respect to paragraph (a) that the present criteria for including the quarterly financial information required by such paragraph have little relevance to those upon which the intergrated system is based. The present criteria may no longer be appropriate and may need to be revised as part of another rulemaking effort.

As explained in the discussion of the Financial Information Section of the Regulation, paragraph (b) of current Item 12 is proposed to be a separate Item of Regulation S-K.

Paragraph (c) is proposed to be revised to include a reference to Statement of Financial Accounting Standards No. 46, which supplements SFAS No. 33 "The Effects of Changing Prices."

Item 303. *Management's Discussion and Analysis of Financial Condition and Results of Operations.* As this Item was adopted less than a year ago (current Item 11 of Regulation S-K) and the disclosures filed pursuant thereto are the subject of current staff study, no substantive changes are proposed at this time. It should be noted, however, that in complying with paragraph (a)(1) of this Item, registrants, whether or not there has been a change in their liquidity trends, are obliged to identify and describe internal and external sources of liquidity and to discuss material unused sources of liquid assets. Further to be noted, Instruction 2 to paragraph (a) of the Item does no more than allow registrants to omit a detailed description of circumstances and events specifically reflected in the financial statements and the notes thereto. It does not relieve registrants of the obligation to discuss the impact of such circumstances and events on their current or future operations or condition.

As indicated in Securities Act Release No. 6316 (May 11, 1981) [46 FR 27344] relating to parent company only and other separate financial statements, a new Instruction 6 is proposed to be added to this Item to clarily a registrant's obligation to discuss restrictions on the flow of funds within an enterprise and the impact such restrictions may have on the registrant.

Item 304. *Disagreements with Accountants on Accounting and Financial Disclosure.* See the discussion of the Financial Information Section of the Regulation earlier in this Release.

Item 401. *Directors and Executive Officers.* No substantive changes are proposed to be made to this Item from

current Item 3 of Regulation S–K, other than the proposed deletion of the definition of executive officer. A definition of executive officer has been proposed for the Securities Act as part of Regulation C and for the Exchange Act in Rule 3b–7.[21]

Item 402. *Management Remuneration and Transactions.* All changes in this Item, except the new paragraph (h) discussed below and the deletion of the definition of executive officer from the Item discussed in connection with Item 401 [Directors and executive officers], are proposed for clarification purposes and reflect no change in the Commission's interpretation of the Item. Two points of clarification should be noted. Instruction 1 to paragraph (a) of the Item relating to foreign private issuers now explicitly applies to all of Item 402, and Instruction 7 to paragraph (d) of the Item relating to option related disclosure makes clear that the Instruction applies to Exchange Act as well as Securities Act filings.

Paragraph (e) of the Item with respect to indebtedness of management reflects the amendments proposed in Securities Exchange Act Release No. 17517 (Feb. 5, 1981) [46 FR 12011].

Two instructions to paragraph (f) of the current Item 4 of Regulation S–K are proposed to be deleted in the revised Item. Instruction 7 has been omitted as redundant with the Item and Instruction 4, and the substance of Instruction 9 has been moved into Item 508 [Plan of distribution] as it would not elicit the information specified where the Item 402 information is incorporated by reference in a Securities Act registration statement.

New paragraph (h), requiring disclosure of transactions with promoters, incorporates, without substantive change, the disclosure requirements currently specified in Item 11 of Form S–1 under the Securities Act and Item 7(b) of Form 10 under the Exchange Act. The substance of these requirements was omitted inadvertently in the ABC and Guides Releases.

The Appendix, currently part of Schedule 14A [17 CFR 240.101] under the Exchange Act, is proposed to be relocated in Regulation S–K without substantive change and replaces the present cross reference in Regulation S–K to Schedule 14A.

Item 403. *Security Ownership of Certain Beneficial Owners and Management.* No substantive changes are proposed to this Item (current Item 6 of Regulation S–K). Instructions 7 and 8 to Item 6 are proposed to be deleted. The substance of Instruction 7 has been incorporated into Item 201 as explained in the discussion of that Item and Instruction 8 has been dropped as Item 507 [Selling security holders] requires the same information.

Instruction 8 is proposed to be revised to clarify that certain of the information with respect to voting trust interests may be required to be included in the tables required in paragraphs (a) and (b) of the Item and to eliminate any duplication between the tables and the information required by Instruction 7.

The amendments to Item 6 of Regulation S–K, proposed in Securities Exchange Act Release No. 34–17517 (February 5, 1981) [46 FR 12011], are reflected.

Item 501. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.* This Item is proposed to be revised from that proposed as Item 40 in the Guides Release to include, without substantive change, requirements with respect to the facing sheet and cross reference table of the registration statement that are currently set forth in Rules 404(a) and 404(d) of Regulation C. The Item also is proposed to be reorganized to parallel the usual format of the cover page of a prospectus relating to an underwritten offering of securities for cash. Changes to the cover page requirements include:

(1) the revision of paragraph (a) to include the substance of Guide 54 [Misleading character of certain registrants' names], and to require the English translation of foreign names as currently required by Form 20–F and by administrative practice with respect to Secrities Act registration statements of foreign issuers;

(2) the revision of paragraph (b), as proposed in the Guides Release, to permit the omission of the description of securities where unnecessary to disclose the material terms thereof, as would be likely in most common stock offerings;

(3) the revision of Instruction 3 to clarify that disclosure is required where proceeds are not to be escrowed in a best efforts offering;

(4) the revision of proposed Instruction 4 to permit footnote disclosure of maximum-minimum information, consistent with present practice; and

(5) the deletion of the requirement proposed in the Guides Release that where the registrant is making a simultaneous offering in the United States and in a foreign country, the anticipated proceeds from both offerings be set forth on the cover page.

Item 502. *Inside Front and Outside Back Cover Pages of Prospectus.* Item 502 is entirely new and is one of the two primary products of the Commission's decision to centralize, to the maximum extent possible, content requirements in Regulation S–K.

Paragraph (a) [Available information] is derived from Item 7 of proposed Form A and is similar to Item 12 of Form S–7 and Item 8(a) of Form S–16.

Paragraph (b) [Reports to security holders] is adapted from Item 50 [Availability of information] proposed in the Guides Release. The provision is proposed to be broadened to apply in all instances in which an annual report may not be required to be delievered to purchasers of the securities being registered. Additional disclosure is proposed in the case of the registration of American Depository Receipts and other securities of foreign private registrants.

Paragraph (c) [Incorporation by reference] is derived from Item 7(c) of Proposed Form A and is generally comparable to the requirements of Item 8(d) of Form S–16. Unlike Form S–16, however, the undertaking to deliver the incorporated documents on request would be required for secondary as well as primary offerings. The undertaking is proposed to be required in any Securities Act registration statement incorporating by reference an Exchange Act document (*e.g.*, Forms S–8 and S–15 and proposed Forms S–2 and S–3.)

Paragraph (d) [Stabilization] proposes a relocation without substantive change of the provisions of Rule 426 [17 CFR 230.426] of Regulation C.

Paragraph (e) [Delivery of prospectuses by dealers] is derived without substantive change from Rule 425a [Delivery of prospectuses by dealers] [17 CFR 230.425a] under the Securities Act.

Paragraph (f) [Enforceability of liabilities against foreign persons], proposed in the Guides Release as part of the mandated prospectus summary, is proposed to be revised to follow more closely Guide 47 from which it was derived. No substantive change is intended. Paragraph (f) would permit this disclosure to be deleted from the inside cover page if included elsewhere in the forepart of the prospectus.

Paragraph (g) [Table of Contents] is a relocation without substantive change of paragraph (c) of Rule 421 [17 CFR 230.421] of Regulation C.

Item 503. *Summary Information and Risk Factors.* The mandated summary, proposed as Item 41 in the Guides Release, has been withdrawn. Upon reconsideration, the Commission believes that the need for a summary and its precise contents more properly are determined on the basis of each

[21] See Securities Act Release No. 6333 (August 6, 1981).

individual filing. Such determination should be based upon a consideration of whether the length or complexity of the disclosure document warrants a summary in the interest of fair and adequate disclosure. The Commission believes that the application of this standard would result in a summary in most Form S–1 registration statements. Likewise, where a summary is included, the determination of its specific content is subject to the dictates of fair disclosure.[22]

Paragraph (c) [Risk Factors], originally proposed as part of the Item 41 summary, tracks more closely the substance of Guide 6 [Introductory statements], with the addition of the reference to risks arising out of lack of an established trading market currently required in Guide 5 [Preparation of prospectuses]. Consistent with present practice, the proposed disclosure is intended to be in a separately captioned item immediately following the summary or, where there is no summary, immediately following the disclosure required on the inside cover page of the prospectus.

Item 504. *Use of Proceeds.* A number of changes have been made to the requirements of this Item from that originally proposed. The Commission has attempted to modify the Item sufficiently to deal with the commentators' concern that the Item might result in excesive detail.

In place of Instruction 1 to the Item as proposed in the Guides Release, the Item would require disclosure of the reasons for the financing where the registrant has no specific plans for the proceeds. Thus, where a financing is undertaken simply because of advantageous market conditions, prior to any plan, tentative or definitive, for the use of proceeds, the registrant would be required to so state. Plans, however, do not have to be definitive before their disclosure would be required by this proposed Item. Where a registrant knows or reasonably expects that the proceeds may be used for one or more purposes, Such uses would have to be disclosed pursuant to Item 504, as well as the likely priority of, and contingencies affecting, such uses.

Proposed Instruction 6 is a codification of current disclosure practices and the Commission's policy with respect to the necessary disclosure where a registrant indicates that one use of the proceeds is, or may be, the acquisition of one or more businesses. The instruction is not intended to introduce any new obligation to disclose intended acquisition targets.

Item 505. *Determination of Offering Price.* As discussed in connection with Item 202 [Description of registrant's securities], Item 505 consolidates paragraphs (a)(8) and (c)(6) of Item 45 [Securities to be registered] as proposed in the Guides Release. Rather than referring to securities being registered for the first time as proposed in Item 45(a)(8), paragraph (a) of Item 505 refers to common equity for which there is no established public trading market. It should be noted that the Item also would continue to apply where there is a substantial disparity between the offering price and the market price. Paragraph (b) of Item 505 is proposed to be limited in its application to warrants, rights and convertible securities exercisable for common equity for which there is no established public trading market. The Guides Release also solicited comments as to the need to require special disclosure for low-priced issues of nonreporting first-time public issuers, including a commentator's proposal to require such an issuer to submit, at the time of filing of a registration statement, a letter of the underwriters explaining the reason for pricing the securities at $5.00 or less per share and undertaking to supply the staff with information concerning the purchasers. The consensus of the commentators was that no such special requirements should be adopted. The Commission believes that Item 505 will provide investors with adequate disclosure and concurs with the commentators that such additional requirements would be duplicative and result in little additional useful information.

Item 506. *Dilution.* The required disclosure with respect to dilution was originally proposed in combination with "market overhang" information as part of paragraph (e) [Market information] of Item 45 [Securities to be registered]. The two areas of disclosure have been separated, with "overhang" placed in the context of disclosures concerning the market price of a registrant's common equity, and dilution disclosure placed in a separate item limited to instances in which purchasers of the registrant's common equity may be subject to material dilution of their equity interest, either immediately, or in the future as the result of a material amount of outstanding options, rights or convertible securities. The disclosure that is proposed to be required has been limited substantially to the dilution disclosure specified by Guide 6 [Introductory Statements], omitting the graphic illustrations required by the Guide. The reference in Guide 6 to transactions which are currently significant has been revised to refer to transactions during the past five years. In addition, unlike Guide 6, the Item distinguishes between previously non reporting registrants and reporting registrants and requires more limited disclosure in the case of the latter. The Commission believes this change appropriate as the more detailed transactional information proposed to be required only of non reporting issuers generally will have been included in Exchange Act reports and proxy or information statements of reporting companies.

Item 507. *Selling Security Holders.* No substantive changes are proposed to this Item from Item 44 [Selling security holders] as proposed in the Guides Release.

Item 508. *Plan of Distribution.* Originally proposed as Item 42 in the Guides Release, this Item is reorganized substantially and a number of clarifying changes are reflected. In addition, several substantive changes are proposed.

Paragraph (b) [New underwriters], originally proposed as Item 42(e), has been revised to delete reference to "new or speculative issue," a term the commentators found too vague. The revised Item now would require the disclosures specified for certain underwriters in connection with the registration of securities of previously nonreporting registrants or of registrants required, pursuant to Item 501 of Regulation S–K, to include notice of risk factors on the cover page of the prospectus. In response to similar definitional concerns with the concept of promoters "identified with the underwriter(s)," the paragraph now refers to promoters of the registrant having "a material relationship with such underwriter." Likewise, the paragraph also has been revised to delete reference to underwriters "newly organized or recently reactivated, or only recently registered" and to specify a time period that would qualify the underwriter as new and therefore subject it to the required disclosure. The proposed period is three years. The Commission invites specific comment on the appropriateness of the three year period. Also in response to comments, such requirement is proposed to be revised to apply where one or more a

[22] The amendment to Rule 170 [17 CFR 230.170] under the Securities Act, proposed in the ABC Release because the proposed prospectus summary item required disclosure of certain financial information otherwise prohibited by Rule 170, is no longer necessary in light of the revised summary item. Accordingly, the amendment to Rule 170 is not being reproposed and will be withdrawn if the Commission adopts Item 501 as proposed herein.

managing underwriters, or if there are no managing underwriters, where a majority of the principal underwriters, qualify as new. The Guide applied where any underwriter in the syndicate would have qualified as new. The Commission agrees with the commentators that the concerns giving rise to these disclosure requirements involve those situations where the new underwriters are in the position of controlling the underwriters' activities.

Paragraph (c) [Other distributions] has been amended to include as new subparagraph 3, the substance of Item 4 [Distributions other than for cash] from the current Form S–1.

Paragraph (e) [Underwriters' compensation] has been changed to incorporate directly, rather than restating, the NASD's definition of compensation. Direct reference will avoid future amendments to the Item as the NASD changes its definition. The specific requirement to disclose material currency conversion profits, currently in Guide 14 [Underwriter's compensation from conversion of funds into foreign currency], has been deleted in response to the commentators' advice that this is not a source of significant compensation. It should be noted, however, that where such conversion profits are intended to constitute, or are negotiated as, a part of the underwriters' compensation, they may, in certain circumstances, be deemed by the NASD to be "other items of value accruing to the underwriter" and would therefore be disclosable.

The Guides Release inquired whether generic or other disclosure should be made to investors concerning anticipated distribution and research practices under the recently approved amendments to Section 24 of Article III of the NASD's Rules of Fair Practice. Section 24, which covers selling concessions, discounts and other allowances and provides that they may only be allowed as consideration for services rendered in distribution, was amended to provide that members are not prohibited from selling any securities to a person to whom it has provided or will provide bona fide research if the stated public offering price is paid by the purchaser. Under this proviso to Section 24 such "bona fide research" is considered a service in distribution in connection with sale, and therefore is outside the scope of the terms "discount, concession or other allowance" as used in the Rule. Section 24 makes clear that persons may make permitted designated sales for bona fide research services only where the stated public offering price is paid by the purchaser. No changes have been made to either paragraph (e) or (h) [Dealers' compensation] to require disclosure of selling concessions in return for research services provided customers as permitted by Section 24. In determining not to propose such requirements, the Commission was persuaded by the commentators, including the NASD, of the inability of registrants to provide meaningful disclosure with respect to such activities. It appears that there is little practical way for the registrant or managing underwriter to identify the purchasers who will designate a broker or dealer because of research furnished to them since designated sales can occur after effectiveness of the registration statement. Thus, it appears that the only disclosure possible would be a generic description of the class of persons who might make such designations. Further, the problems in ascertaining which designated sales represent "soft dollar" payments for research suggest that the best disclosure that could result would be generalized and would not provide specific quantifications of such concessions. In view of the practical problems that appear to preclude all but the most generalized of disclosure with respect to these distribution and research practices, the Commission believes it would not serve the interests of investors to require such disclosure.

Paragraph (g) [Indemnification of underwriters] has been relocated without substantive change from Item 48(c) proposed in the Guide Release.

Paragraph (i) [Finders and promoters] has been revised, as suggested by several commentators, to require disclosure of relationships only with the managing underwriters, unless there are none, in which case the Commission believes it appropriate to require disclosure of such relationships with respect to each principal underwriter. Managing underwriters as used in this Item is intended to have the same meaning as it does for purposes of Rule 462A.[23] Also, at the suggestion of a commentator, a material standard for relationships with the registrant and others has been included by changing the reference from "any affiliation" to "material relationship".

The provisions of proposed Item 42(g), codifying Guide 53 [Secondary distributions "at the market"], have been deleted from Item 508. The Commission believes that the disclosure with respect to marketing arrangements required by other paragraphs of the Item are sufficient for investors' needs. To the extent the Commission requires additional information to assure that sufficient protections have been implemented to comply with its anti-manipulation rules, the staff will be able to request such data from registrants pursuant to proposed Rule 419 of Regulation C.

Item 509. *Interest of Named Experts and Counsel.* This Item, originally proposed in the Guides Release as Item 47, has been revised to incorporate the substance of Guide 56 [Interests of counsel and experts in the registrant]. As originally proposed, the Item required the disclosure specified in Item 23 of the current Form S–1, without taking into acocunt the provisions of the Guide.

It should be noted that, as required by Guide 56, the disclosure pursuant to this Item will be required in the prospectus, and not Part II of the registration statement as initially proposed. In the Guides Release the Commission invited comment on the need to define "substantial interest" as used in the Item. While several commentators favored defining the term, the majority commenting on the issue disagreed. The reproposed Item does not define the term but includes the de minimis exclusion currently in Guide 56, modified to apply to all experts (other than accountants) and counsel. The Item also has been revised to require disclosure of relationships with any principal underwriter only where there are no managing underwriters.

Item 510. *Indemnification of Directors and Officers.* Proposed changes to this Item, originally proposed as Item 48 in the Guides Release, are for purposes of reorganization and clarification. No substantive changes are intended. As noted above in the discussion of Item 508 [Plan of Distribution], requirements concerning indemnification of underwriters have been moved to Item 506(g).

Item 511. *Other Expenses of Issuance and Distribution.* Item 511, originally proposed as Item 46 [Other expenses of issuance and distribution] in the Guides Release, is reproposed with one substantive change. The Instruction has been revised to require separate disclosure of insurance policy premiums only for those policies obtained in connection with the offering of the securities to be registered. Existent umbrella insurance policies that include Federal securities law liability coverage would not be required to be disclosed separately. Likewise, in view of the problems cited by commentators responding to the Commission's request for comments on the need for disclosure of policy premium increases, the

[23] Securities Act Release No. 6334 (August 6, 1981).

Commission does not propose to require disclosure of such increases on existent policies arising in connection with the offering of the securities to be registered.

Item 512. *Undertakings.* Item 512 is a new item and is the second primary product of the Commission's decision to centralize content requirements in Regulation S–K. Except for undertakings applicable solely to Securities Act registration forms that will not incorporate any Item of Regulation S–K (*e.g.* Forms S–12 and S–18), all undertakings to be included in a registration statement under the Securities Act will be set forth in Item 512. Item 512 proposes only two entirely new undetakings. The first, that required in paragraph (a) for Rule 462A offerings is the subject of Securities Act Release 33–6334.[24] The second, that required in paragraph (b) where Exchange Act documents are incorporated by by reference, is derived from that presently required in Form S–16 for continuous offerings. Where the Commission permits abbreviated disclosure based on incorporation of Exchange Act documents by reference, it is essential that the liability protections for investors not be diminished by allowing such incororation by reference without moving up the effective date of the registration statements. The remaining undertakings reflect current requirements, modified in some instances to allow the aggregation of similar undertakings from several forms. The most significant of these modifications is that reflected in the undertaking in paragraph (e). Paragraph (e) applies to those registration statements that permit or require the use of the annual report to security holders and quarterly reports in place of company related disclosure set forth in the prospectus. This undertaking currently would be required in registration statements on Forms S–2 and S–15. Other changes have been made to make the various undertakings consistent and to eliminate redundacy.

Item 601. *Exhibits.* Item 601 proposes a number of changes from current Item 7 of Regulation S–K, many reflecting the various proposals that are the subject of accompanying releases published today as part of the integrated disclosure system. Three rules from Regulation C are proposed to be relocated in paragraph (a) of this Item. The requirement for and the form of the exhibit index contained in paragraph (e) of Rule 403 [17 CFR 230.403] is proposed as paragraph (a)(2), while Rules 446 [17 CFR 230.446] and 472(d) [17 CFR 230.472(d)] are proposed to be incorporated into the instruction to this Item. The two exhibit tables are proposed to be consolidated into one and to be revised to reflect proposed Securities Act registration statement Forms S–1, S–2, and S–3, and to delete reference to current Securities Act registration statement Forms S–1, S–7 and S–16.

The exhibit table reflects the following proposed changes to existing exhibits:

(1) Exhibit Item 1 [Underwriting agreement] would no longer be required to be filed with a Form S–14 registration statement because it does not appear that such an exhibit would be relevant in the context of a transaction registered on that Form;

(2) Exhibit Item 13 [Annual report to security holders Form 10–Q or quarterly report to security holders] would be required to be filed in connection with Forms S–2, S–15 and 10–K filings where the registrant incorporates by reference its annual report to security holders, Form 10–Q or quarterly report to security holders. The exhibit item with respect to the annual report to Security holders would not longer be required with a Form S–8 registration statement as that Form reuqires the registrant to incorporate by reference its Form 10–K report, which contains the same financial statements as the annual report to security holders;

(3) current Exhibit Item 15 [Instruments defining the rights of participating employees] is proposed to be deleted as such documents appear to be unnecessary when the more basic plan documents are not required; and

(4) Exhibit Item 22 [Subsidiaries of the registrant] would be required to be filed with a registration statement on Form S–1 or 10, consistent with the proposed changes to these Forms.[25]

Six new exhibit items are proposed to be added to the exhibit table, five of which are existing exhibit requirements currently located outside of Regulation S–K. These five requirements are: Exhibit Item 25 [Power of attorney] currently required by Rule 402(c) [17 CFR 230.402(c)] of Regulation C; Exhibit Item 26 [Statement of eligibility of trustee] currently required by specific registration statement forms; Exhibit Item 27 [Invitations for competitive bids] currently required by Rule 428 [17 CFR 230.428] of Regulation C; and Exhibit Item 28 [Additional exhibits] currently required by Rule 445 [17 CFR 230.445] of Regulation C. The new requirement, Exhibit Item 21 [Other documents or statements to security holders] is proposed as the result of the proposed changes to Form 8–K.[26]

The description of six exhibits are proposed to be revised. Paragraph 601(b)(4)(v) [Instruments defining rights of security holders], as revised, would make the exclusion of long term debt not being registered applicable to Forms 8–K and 10–Q. The exclusion currently applies to Forms S–1, S–11, S–14, 10 and 10–K; there appears to be no reason to treat Forms 8–K and 10–Q differently.

Paragraph 601(b)(10) [Material contracts] would be revised to require in paragraph (ii)(D) that only material lease be filed as exhibits. This change is proposed for clarification and to reflect current staff policy. Paragraph (iii)(A) is proposed to be revised to delete the reference to the definition of executive officer in Item 402 of the Regulation, as a definition of executive officer is proposed to be included in the Exchange Act general rules and in Regulation C. Additionally, two new paragraphs are proposed to be added to this Item. New paragraph (iii)(B)(*5*) would be added to exempt those foreign private registrants furnishing remuneration information on an aggregate basis from filing management contracts or remuneration plans as an exhibit. This provision reflects current staff practice. Paragraph (iii)(B)(6) will be added to this Item to codify the Commercial Credit Corporation no-action letter (Feb. 17, 1981). The change would exempt specifically a wholly owned subsidiary of a reporting company from filing copies of remunerative plans, contracts or arrangements as exhibits to its Form 10–K report, or to a proposed Form S–2 registration statement for a debt offering.

Paragraph (b)(19) [Previously unfiled documents] is proposed to be revised to make clear that amendments or modifications must be filed only for *currently required* exhibits. This revision would permit registrants not to file amendments to exhibits which may have been material and required when first filed, but because of such factors as growth of the company, are no longer currently required.

[24] See Securities Act Release No. 334 (August 6, 1981) for discussion of proposed undertaking.

[25] See Securities Act Release No. 6337 (August 6, 1981) and Securities Exchange Act Release No. 18014 (August 6, 1981).

[26] See Exchange Act Release No. 18014 (August 6, 1981). The exhibit requirement propoosed in the ABC Release for Form A [now form S–3] relating to restatements of financial statements and dispositions has been eliminated as Form S–3 would require inclusion of the information called for by such exhibit requirement either in the prospectus or in an Exchange Act document incorporated by reference in the regstration statement.

Paragraph (b)(22) [Subsidiaries of the registrant] is proposed to be amended to require that the list of subsidiaries be repeated, rather than allowing a reference to the most recent filling containing the list.

Paragraph (b)(24) [Consents of experts and counsel] is proposed to be revised to make clear the obligation to file counsel's consents as exhibits and to include the requirements for the dating and the manually signing of consents filed with the registration statement currently required by Rule 435 [17 CFR 230.435] of Regulation C.

Proposed paragraph (b)(28) [Additional exhibits] reflects the revisions to Rule 12b–23 [17 CFR 240.12b–23] under the Exchange Act and Rulle 411 [17 CFR 230.411] under the Securities Act relating to incorporation by reference.[27]

[27] See Securities Act Release No. 6333 (August 6, 1981).

V. Disposition of the Guides

The following table indicates the proposed dispositiion of each of the Guides, whether it is proposed to be eliminated altogether, and, if not, the proposed relocation of its substance in Regulation S–K, Regulation C or the General Rules under the Securities Act or the Exchange Act.

Table B.—*Proposed Revision of Guides*

Guide number and caption	Eliminated	Industry guide	S-K	Reg. C	Other
Securities Act guides:					
1. Pre-filing conferences with registrants	X				
2. Letter of comment	X				
3. Applicability of amended rules and forms to previously filed statements.				401	
4. Registration of securities for delayed offering.				462A	
5. Preparation of prospectuses			501, 503, 508		
6. Introductory statements			503, 506		
7. Dating of prospectuses			501		
8. Pictorial or graphic representations in prospectuses.	X				
9. Promoters				405(Y)	
10. Registration of options, warrants or rights and other securities issued or sold to underwriters.	X				
11. Finders			508		
12. Over-the-counter trading in rights or warrants.	X				
13. Market quotations—Absence of established market.			201		
14. Underwriters' compensation from conversion of funds into foreign currency.	X				
15. Expenses of issuance and distribution			511, 501		
16. Underwriters' experience and due diligence inquiry.			508	419	
17. Disclosure of underwriting discounts and commissions.			508	461	
18. Original issue discount of debt securities			202		
19. Distribution of preliminary prospectus					15c2–8
20. Mailing of amended preliminary prospectus to regional offices.	X				
21. Use of proceeds			504		
22. Summary of earnings	X				
23. Current financial statements and related data.	X				
24. Currencies in which amounts are to be stated by foreign issuers.	X				
25. Manner of showing distributions by real estate syndicates and real estate investment trusts.	X				
26. Statement of dividend policy	X				
27. Names of customers and competitors	X				
28. Disclosure of extractive reserves and natural gas supplies.	X				
29. Disclosure of material long-term leases	X				
30. Disclosure of principal sources of electric or gas revenues.		1			
31. Disclosure of recent developments-Backlog.			101		
32. Liability of shareholders to laborers, servants or employees under state law.			202		
33. Notice of redemption of convertible securities or callable warrants.			202		
34. Executive committee	X				
35. Identification of members of board of directors selected by the underwriters.			506		
36. Effect of issuance of options or warrants to certain persons.	X				
37. Consents of accountants	X				
38. Consents of attorneys			601	436	
39. Charter amendments authorizing new securities.			601		
40. Underwriting agreements	X				
41. Specimen bond	X				
42. Reports or memoranda concerning the registrant.				419	

Table B.—*Proposed Revision of Guides*—Continued

Guide number and caption	Eliminated	Industry guide	S-K	Reg. C	Other
43. Representations from selling security holders.	X				
44. Securities Act exemption for shares subject to options.	X				
45. Information as to over-the-counter market for securities to be registered.	X				
46. Statement as to indemnification			506, 510	461	
47. Enforceability of civil liabilities under the act against foreign persons.			502		
48. Annual reports to security holders			503		
49. Revision of prospectuses where a company and its employee plan have different fiscal years.	X				
50. Disclosure of confidential material to other government agencies.				485	
51. Release of price data on subscription offerings by listed companies.					135
52. Disclosure as to listing on an exchange			202		
53. Secondary distributions "at the market"				419, 461	
54. Misleading character of certain registrants' names.			501		
55. Prospectuses relating to interests in oil and gas programs.		2			
56. Interests of counsel and experts in the registrant.			509		
57. Registration statements relating to "insurance premium funding" programs.		3			
58. Disclosure in prospectus of registrant's business address and telephone number.			503		
59. Summary of disclosure in the prospectus	X		503		
60. Preparation of registration statements relating to interests in real estate limited partnerships.		4			
61. Statistical disclosure by bank holding companies.		5			
62. Disclosure of projections of future economic performance.			§ 229.001		
63. Disclosure relating to management remuneration by certain foreign private issuers.			402		
Exchange Act guide:					
1. Summary of operations	X				
2. Disclosure of extractive reserves and natural gas supplies.	X				
3. Statistical disclosure by bank holding companies.		5			
4. Integrated reports to shareholders					14a-3, 10-K, 10-Q
5. Disclosure of projections of future economic performance.			§ 229.001		

VI. Items 1, 2, 3, 4, 5 and 6 of Regulation S-K

As noted above, few substantive changes are proposed herein to be made to existing Items 1, 2, 3, 4, 5, and 6 of Regulations S-K. As part of its sunset review of existing rules and regulations under the Securities Act and Exchange Act, the Commission will be evaluating these Items. Substantive comments received with respect to these Items will be considered as part of separate future rule making efforts. Comments will be solicited at the time these projects are undertaken.

VII. Request for Comments

Any interested person wishing to submit written comments on the proposed amendments, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also solicits comment as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competitive. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

Text of Proposals

In accordance with the foregoing, it is proposed to revise 17 CFR Part 229 to read as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

Sec.

229.001 General.
229.100 Business.
229.200 Securities of the registrant.
229.300 Financial information.
229.400 Mangement and certain security holders.
229.500 Registration statement and prospectus provisions.
229.600 Exhibits.
229.700 Miscellaneous.
229.800 List of industry guides.

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 306(a)(2), 90 Stat. 57; secs. 13, 14, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a) 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 5, 6, 78 Stat. 569, 570–574; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 155 U.S.C. 77g, 77j, 77s(a), 78m, 78n, 78o(d), 78w(a)).

§ 229.001 General.

(a) *Subject matter of Regulation S-K.*

(1) *General.*

(i) Subject matter of Regulations S-K.

(ii) Application of Regulations S-K.

(iii) Commission policy on projections.

(2) *Business.*

(i) Item 101—Description of business.

(ii) Item 102—Description of property.

(iii) Item 103—Legal proceedings.

(3) *Securities of the registrant.*

(i) Item 201—Market price of and dividends on the registrant's common stock and related stockholder matters.

(ii) Item 202—Description of registrant's securities.

(4) *Financial information.*

(i) Item 301—Selected financial data.

(ii) Item 302—Supplementary financial information.

(iii) Item 303—Management's discussion and analysis of financial condition and results of operations.

(iv) Item 304—Disagreements with accountants on accounting and financial disclosure.

(5) *Management and certain security holders.*

(i) Item 401—Directors and executive officers.

(ii) Item 402—Management remuneration and transactions.

(iii) Item 403—Security ownership of certain beneficial owners and management.

(6) *Registration statement and prospectus provisions.*

(i) Item 501—Forepart of registration statement and outside front cover page of prospectus.

(ii) Item 502—Inside front and outside back cover pages of prospectus.

(iii) Item 503—Summary information and risk factors.

(iv) Item 504—Use of proceeds.

(v) Item 505—Determination of offering price.

(vi) Item 506—Dilution.

(vii) Item 507—Selling security holders.

(viii) Item 508—Plan of distribution.

(ix) Item 509—Interests of named experts and counsel.

(x) Item 510—Indemnification of directors and officers.

(xi) Item 511—Other expenses of issuance and distribution.

(xii) Item 512—Undertakings.

(7) *Exhibits.*

(i) Item 601—Exhibits.

(8) *Miscellaneous.*

(i) Item 701—Recent sales of unregistered securities.

(9) *List of industry guides.*

(b) *Application of Regulation S–K.* This part (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. 77a et seq., as amended ("Securities Act"), and the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., as amended ("Exchange Act") (Parts 230 and 240 of this chapter), the Interpretative Releases under these Acts (Parts 231 and 241 of this chapter) and the forms under these Acts (Parts 239 and 249 of this chapter)) states the requirements applicable to the content of the non-financial statement portions of:

(1) Registration statements under the Securities Act (Part 239 of this chapter) to the extent provided in the forms to be used for registration under such Act; and

(2) Registration statements under section 12 (Subpart C of Part 249 of this chapter), annual or other reports under sections 13 and 15(d) (Subparts D and E of Part 249 of this chapter), annual reports to security holders and proxy and information statements under section 14 of the Exchange Act (Part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under such Act.

(c) *Commission policy on projections.* The Commission encourages the use in documents specified in Rule 175 under the Securities Act [17 CFR 230.175] and Rule 3b–6 under the Exchange Act [17 CFR 240.3b–6] of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections.

(1) *Basis for projections.* The Commission believes that management should have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations, or income (loss) before extraordinary items in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be convered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(3) *Investor understanding.* (i) When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumption in a manner that will provide a framework for analysis of the projection.

(ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-senstive areas in a business operation.

(iii) With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projects no longer have a reasonable basis.

(iv) Since a registrant's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or to resume making projections is best left to management. However, the Commission encourages registrants not to

discontinue or to resume projections in Commission filings without a reasonable basis.

§ 229.100 Business.

Item 101. Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries and any predecessor(s) during the past five years, or such shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

(1) In describing developments, information shall be given as to matters such as the following: the year in which the registrant was organized and its form of organization; the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

(2) Registrants, (i) filing a registration statement on Form S–1 (17 CFR 239.11) under the Securities Act or on Form 10 (17 CFR 249.210) under the Exhange Act, (ii) not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of such registration statement, and (iii) that (including predecessors) have not received revenue from operations during each of the three fiscal years immediately prior to the filing of registration statement, shall provide the following information: (A) if the registration statement is filed prior to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year; or (B) if the registration statement is filed subsequent to the end of the registrant's second fiscal quarter, a descripition of the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan shall include such matters as:

(*1*) In the case of a registration statement on Form S–1, a statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant; the specific reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and cash resources need not be provided; in addition, if the narrative statement is based on a cash budget, such budget shall be furnished to the Commission as supplemental information, but not as part of the registration statement;

(*2*) An explanation of material product research and development to be performed during the period covered in the plan;

(*3*) Any anticipated material acquisition of plant and equipment and the capacity thereof;

(*4*) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration; and

(*5*) Other material areas which may be peculiar to the registrant's business.

(b) *Financial information about industry segments.* State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other industry segments of the registrant shown separately), operating profit or loss and identifiable assets attributable to each of the registrant's industry segments. (See Appendix A to this Item for a suggested tabular format for presentation of this information.) To the extent that financial information included pursuant to this Item complies with generally accpeted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information about its segments in the financial statements; conversely, a registrant may cross reference to the financial statements.

(1) The prior period information shall be retroactively restated in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement:

(i) When the financial statements of the registrant as a whole have been retroactively restated; or (ii) When there has been a change in the way the registrant's products or services are grouped into industry segments and such change affects the segments' information being reported; restatement is not required when a registrant's reportable segments change soley as a result of a change in the nature of its operations or as a result of a segment losing or gaining in significance.

(2) If the registrant is required to present interim financial statements by Article 3 of Regulation S–X [17 CFR 210], discuss any facts relating to the performance of any of the segments during the period which, in the opinion of management, indicate that the three year segment financial data may not be indicative of current or future operations of the segment. Comparative financial information shall be included to the extent necessary to the discussion.

(c) *Narrative description of business.* (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant industry segment or each reportable industry segment about which financial information is presented in the financial statements. To the extent material to an understanding of the registrant's business taken as a whole, the description of each such segment shall include the information specified in paragraphs (c)(1) (i) through (x) of this Item. The matters specified in paragraphs (c)(1) (xi) through (xiii) of this Item shall be discussed with respect to the registrant's business in general; where material, the industry segments to which these matters are significant shall be identified.

(i) The principal products produced and services rendered by the registrant in the industry segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed $50,000,000 during any of such fiscal years.

(ii) A description of the status of a product or segment (*e.g.* whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary), if there has been a public announcement of, or if the registrant otherwise has made public information about, a new product or industry segment that would require the investment of a material amount of the assets of the registrant or that otherwise is material. This paragraph is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would affect adversely the registrant's competitive position.

(iii) The sources and avilability of raw materials.

(iv) The importance to the industry segment and the duration and effect of all patents, trade marks, licenses, franchises and concessions held.

(v) The extent to which the business of the industry segment is or may be seasonal.

(vi) The practices of the registrant and the industry (respective industries) relating to working capital items (*e.g.*, where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; where the registrant provides rights to return merchandise; or where the registrant has provided extended payment terms to customers).

(vii) The dependence of the segment upon a single customer, or a few customers, the loss of any one or more of which would have a material adverse effect on the segment. The name of any customer and its relationship, if any, with the registrant or its subsidiaries shall be disclosed if sales to the customer by one or more segments are made in an aggregate amount equal to 10 percent or more of the registrant's consolidated revenues. The names of other customers may be included, unless in the particular case the effect of including the names would be misleading. For purposes of this paragraph, a group of customers under common control or customers that are affiliates of each other shall be regarded as a single customer.

(viii) The dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog. (There may be included as firm orders government orders that are firm but not yet funded and contracts awarded but not yet signed, provided an appropriate statement is added to explain the nature of such orders and the amount thereof. The portion of orders already included in sales or operating revenues on the basis of percentage of completion or program accounting shall be excluded.)

(ix) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

(x) Competitive conditions in the business involved including, where material, the identity of the particular markets in which the registrant competes, an estimate of the number of competitors and the registrant's competitive position, if known or reasonably available to the registrant. Separate consideration shall be given to the principal products or services or classes of products or services of the segment, if any. Generally, the names of competitors need not be disclosed. The registrant may include such names, unless in the particular case the effect of including the names would be misleading. Where, however, the registrant knows or has reason to know that one or a small number of competitors is dominant in the industry it shall be identified. The principal methods of competition (*e.g.*, price, service, warranty or product performance) shall be identified, and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, shall be explained if known or reasonably available to the registrant.

(xi) If material, the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state, if material, the estimated dollar amount spent during each of such years on customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(xii) Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem materials.

(xiii) The number of persons employed by the registrant.

(d) *Financial information about foreign and domestic operations and export sales.* (1) State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other geographic areas shown separately), profitability, and identifiable assets attributable to each of the registrant's geographic areas and the amount of export sales in the aggregate or by appropriate geographic area to which the sales are made. (See Appendix B to this Item for a suggested tabular format for presentation of this information.) The prior period information shall be retroactively restated in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement:

(i) When the financial statements of the registrant as a whole have been retroactively restated, or

(ii) When there has been a change in the way a registrant's foreign operations are grouped into geographic areas and such change affects the geographic area information being reported. Restatement is not required when a registrant's geographic areas change as a result of a change in the nature of operations or as a result of an area losing or gaining in significance.

(2) Any risks attendant to the foreign operations and any dependence of one or more of the registrant's industry segments upon such foreign operations shall be described unless it would be more appropriate for this matter to be discussed in connection with the description of one or more of the registrant's industry segments pursuant to paragraph (c) of this Item.

(3) If the registrant is required to present interim financial statements by Article 3 of Regulation S–X [17 CFR 210], discuss any facts relating to the information furnished pursuant to this paragraph (d) that, in the opinion of management, indicate that the three year financial data for foreign and domestic operations or export sales may not be indicative of current or future operations. Comparative information shall be included to the extent necessary to the discussion.

Instructions to Item 101. 1. In determining what information about the industry segments is material to an understanding of the registrant's business taken as a whole and therefore required to be disclosed, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (*e.g.*, whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (*e.g.*, whether it affects or may affect numerous items in the segment information), and the impact of the matter (*e.g.*, whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, althought the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

2. The determination whether information about foreign and domestic operations and export sales is required in the document for a

particular year shall be based upon an evaluation of interperiod comparability. For instance, interperiod comparability most likely would require that foreign and domestic operations and export sales that have been significant in the past and are expected to be significant in the future be regarded as reportable even though they are not significant in the current fiscal year.

3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this Item or the furnishing in substitution thereof of appropriate information of comparable character.

Appendix A—Industry Segments

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraphs (b) and (c)(1)(i) of Items 101 regarding industry segments and classes of similar products or services.

Financial Information Relating to Industry Segments and Classes of Products or Services

	Year		
	1	2	3
Sales to unaffiliated customers:			
Industry segment A:			
Class of product 1			
Class of product 2			
Industry segment B:			
Class of product 1			
Class of product 2			
Industry segment C			
Other industries			
Intersegment sales or transfers:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			
Operating profit or loss:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			
Identifiable assets:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			

Appendix B—Foreign and Domestic Operations and Export Sales

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraph (d) of Item 101 regarding foreign and domestic operations and export sales.

Financial Information Relating to Foreign and Domestic Operations and Export Sales

	Year		
	1	2	3
Sales to unaffiliated customers:			
United States[1]			
Geographic area A			
Geographic area B			
Sales or transfers between geographic areas:			
United States			
Geographic area A			
Geographic area B			
Operating profit or loss:[2]			
United States			
Geographic area A			
Geographic area B			
Identifiable assets:			
United States			
Geographic area A			
Geographic area B			
Export sales; United States[3]			

[1] Or appropriate area of domestic operations.
[2] Or some other reasonable measure of profitability as used in the financial statements.
[3] Identify the geographic areas to which the sales are made, if appropriate.

Item 102. Description of property. (a) *general.* State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. In addition, identify the industry segment(s) that use the properties described. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly how held.

Instructions to Paragraph (a) of Item 102. 1. What is required is such information as reasonably will inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities by the registrant. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

2. In determining whether properties should be described, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S–K.

3. In the case of an extractive enterprise, material information shall be given as to production, reserves, locations, development and the nature of the registrant's interest. If individual properties are of major significance to an industry segment:

A. More detailed information concerning these matters shall be furnished; and

B. Appropriate maps shall be used to disclose location data of significant properties except in cases for which numerous maps would be required.

4. A If reserve estimates are referred to in the document, the staff of the Office of Engineering, Division of Corporation Finance of the Commission, shall be consulted. That Office may request that a copy of the full report of the engineer or other expert who estimated the reserves be furnished as supplemental information and not as part of the filing.

B. If the estimates of reserves, or any estimated valuation thereof, are represented as being based on estimates prepared or reviewed by independent consultants, those independent consultants shall be named in the document.

5. Estimates of oil or gas reserves other than proved or, in the case of other extractive reserves, estimates other than proved or probable reserves, and any estimated values of such reserves shall not be disclosed in any document publicly filed with the Commission, unless *it can be shown to the staff of the Office of Engineering, Division of Corporation Finance, that* (i) failure to include such information would render the document materially misleading, or (ii) such information is required to be disclosed in the document by foreign law.

6. The definitions in § 210.4–10(a) of Regulation S–X [17 CFR 210] shall apply to this paragraph (a) with respect to oil and gas operations and to all of paragraph (b) of this Item.

(b) *Oil and gas operations.* If oil and gas operations are material to the registrant's and its subsidiaries' business operations or financial position, the disclosure specified in this paragraph (b) shall be included under appropriate captions (in tabular form, if practicable, and with cross references, where applicable, to related information disclosed in financial statements). *Provided, however,* That limited partnerships or joint ventures that conduct, operate, manage, or report

upon oil and gas drilling or income programs, that acquire properties either for drilling and production, or for production of oil, gas, or geothermal steam or water, need not include such disclosure and, *Provided further*, That any registrant qualifying for the exemption provided in § 210.4–10(k) of Regulation S–X need not provide any such information.

Note.—Limited partnerships exempted from the disclosure required in this paragraph by the first proviso of this paragraph (b) remain subject to disclosure requirements of § 210.4–10(k) of Regulation S–X. See discussion in Accounting Series Release No. 257 (Dec. 19, 1978) [43 FR 60404]; and Staff Accounting Bulletin No. 40, Topic 6(d)(3)(c) [17 CFR 211] (Jan. 23, 1981).

(1) *Reserves.* (i) As of the end of each of the last three fiscal years (but not for fiscal years ending prior to December 25, 1978) estimated net quantities of: (A) proved oil and gas reserves; (B) proved developed oil and gas reserves; (C) oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer; and (D) the registrant's share of reserves of investees accounted for by the equity method.

(ii) For each of the net quantities reported, the present value of estimated future net revenues, computed in accordance with § 210.4–10(k)(6) of Regulation S–X.

Instructions to Paragraph (b)(1) of Item 102.

1. If these reserves are located entirely within the registrant's home country, that fact shall be disclosed. If some or all of the reserves are located in foreign countries, the disclosure of net quantities of reserves of oil and gas and present value of estimated future net revenues (as required above) shall be reported separately for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant resrves are located. Foreign geographic areas shall consist of those individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

2. Disclosure shall be given of the effect on ownership of reserves of any takeover or nationalization within the most recent fiscal year by foreign governments of properties owned by the registrant, including any change of a property interest into a long-term supply, purchase, or similar agreement.

3. If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proved, the registrant shall notify the Office of Engineering, Division of Corporation Finance, of the Commission. If the required information is not disclosed or if categories of reserves other than proved are disclosed for these reasons, the documents shall identify the country, cite the law or regulation which restricts or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that the reserve estimates include reserves other than proved.

4. If no major discovery or other favorable or adverse event that is believed to have caused a significant change in the estimated proved reserves has occurred since the end of the most recent fiscal year, a statement to that effect shall be made; otherwise, an explanation of any such discovery or event shall be provided, including, to the extent reasonable, and estimate of the proved oil and gas reserves associated with such discovery or event.

(2) *Reserves reported to other agencies.* Any estimates of total, proved net oil or gas reserves filed with or included in reports to any other Federal authority or agency since the beginning of the last fiscal year (or a statement that there were none), together with the name of the authority or agency and an explanation of the reasons for differences, if any, between such estimates and the estimates included in the document. This requirement shall not apply if the difference between the total reserve estimate included in the Commission filing and the total reserve eatimate filed with the Federal authority or agency does not exceed five percent. However, a statement that the difference does not exceed five percent shall be included.

(3) *Production.* (i) Net quantities of oil (including condensate and natural gas liquids) and of gas produced for each of the last three fiscal years and the net quantities of each received during each of these years applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer, by areas no larger than the geographic areas used for estimated reserves in paragraph (b)(1) of this Item.

(ii) For each of the last three fiscal years (but not for fiscal years ending prior to December 25, 1978), by the same geographic areas for which production data are required:

(A) the average sales price (including transfers) per unit of oil produced and of gas produced; and (B) the average production cost (lifting cost) per unit of production.

Instructions to Paragraph (b)(3) of Item 102.

1. Generally, net production shall include only production that is owned by the registrant and produced to its interest, less royalties and production due others. However, in special situations (*e.g.*, foreign production) net production before royalties may be provided if more appropriate. If "net before royalty" production figures are furnished, the change from the common usage of "net production" shall be noted.

2. Any part of natural gas liquids production obtained through or from processing plant ownership rather than through leasehold ownership shall be reported separately, if material.

3. Production of natural gas shall include only marketable production of gas on an "as sold" basis. Production will include dry, residue, and wet gas, depending on whether liquids have been extracted before the registrant passed title. Flared gas, injected gas and gas consumed in operations shall be omitted. Recovered gas-lift gas and reproduced gas shall not be included until sold.

4. The transfer price of oil and gas prodcued shall be determined in accordance with § 210.4–10(k)(4) of Regulation S–X.

5. The average production cost per unit of production shall be computed using production costs disclosed pursuant to § 210.4–10(k)(3) of Regulation S–X. Units of production shall be expressed in common units of production with oil or gas converted to a common unit of measure on the basis used in computing amortization (relative energy content or gross revenue method). See § 210.4–10(e)(3) or § 210.4–10(i)(3)(iii) of Regulation S–X, whichever is appropriate.

(4) *Productive wells and acreage.* As of a reasonably current date or as of the end of the most recent fiscal year, the total gross and net productive wells, expressed separately for oil and gas, and the total gross and net developed acres (*i.e.*, acres spaced or assignable to productive wells) by the geographic areas for which production data are required pursuant to paragraph (b)(3) of this Item.

Instructions to Paragraph (b)(4) of Item 102.

1. For purposes of this paragraph, one or more completions in the same bore hole shall be counted as one well. A footnote shall disclose the number of wells with multiple completions. If one of the multiple completions in a given well is an oil completion, the well shall be classified as an oil well.

2. A gross well or acre is a well or acre in which a working interest in owned. The number of gross wells is the total number of wells in which a working interest is owned.

3. A net well or acre is deemed to exist when the sum of fractional ownership working interests in gross wells or acres equals one. The number of net wells or acres is the sum of the fractional working interests owned in gross wells or acres expressed as whole numbers and fractions thereof.

4. For those unusual situations in which gross and net data cannot be supplied, alternative disclosure shall be furnished that adequately describes the registrant's productive wells and developed acreage.

5. Productive wells are producing wells and wells capable of production.

(5) *Undeveloped acreage.* As of a reasonably current date or as of the end of the most recent fiscal year, the amounts of undeveloped acreage, both leases and concessions, if any,

expressed in both gross and net acres by appropriate geographic area, together with an indication of acreage concentrations, and, if material, the minimum remaining terms of leases and concessions. Undeveloped acreage is considered to be those lease acres on which wells have not been drilled or completed to a point that would permit the production of commercial quantities of oil and gas regardless of whether or not such acreage contains proved reserves. Undeveloped acreage should not be confused with undrilled acreage Held by Production under the terms of a lease.

(6) *Drilling activity.* For each of the last three fiscal years (but not for fiscal years ending prior to December 25, 1978), by appropriate geographic areas: (i) the number of net productive and dry exploratory wells drilled; and (ii) the number of net productive and dry development wells drilled.

Instructions to Paragraph (b)(6) of Item 102. 1. A dry well (hole) is an exploratory or a development well found to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

2. A productive well is an exploratory or a development well that is not a dry well.

3. The number of wells drilled refers to the number of wells (holes) completed at any time during the fiscal years, regardless of when drilling was initiated.

4. The term "completion" refers to the installation of permanent equipment for the production of oil or gas, or, in the case of a dry hole, to the reporting of abandonment to the appropriate agency.

(7) *Present activities.* Present activities, such as the number of wells in process of drilling (including wells temporarily suspended), waterfloods in process of installation, pressure maintenance operations, and any other related operations of material importance by appropriate geographic areas. This description of present activities shall be provided for an "as of" date as close to the date of filing the document as reasonably possible or as of the end of the most recent fiscal year. The disclosure of wells in the process of being drilled shall include only those wells actually being drilled at the "as of" date and shall be expressed in terms of both gross and net wells. The disclosure shall not include wells planned but not commenced, unless there are factors which make such information material.

(8) *Delivery commitments.* If the registrant is obligated to provide a fixed and determinable quantity of oil or gas in the future under existing contracts or agreements, material information concerning the estimated availability of oil and gas from any principal sources.

(i) Such information shall be furnished as to current and future reserves and supplies, and shall: (A) identify the principal sources of oil and gas to be relied upon and the total available amounts expected to be received from each principal source and from all sources combined; (B) disclose the total quantities of oil and gas which are subject to delivery commitments; and (C) indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information shall be provided for an appropriate period of one to three years.

(ii) The term "availability" is used herein to mean an estimate of that quantity of oil and gas which can be produced from current proved developed reserves using presently installed equipment under existing economic and operating conditions and an estimate of amounts that can be delivered to the registrant under long-term contracts or agreements on a per-day, per-month, or per-year basis.

(iii) The registrant shall develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure shall be in a form understandable to investors and shall include, but not be limited to, a description of the following factors: (A) significant supplies dedicated or contracted to the registrant; (B) any significant amounts of reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptible contracts; (C) any priority allocations or price limitations imposed by Federal or State regulatory agencies, as well as other factors beyond the control of the registrant which may affect the ability of the registrant to meet its contractual obligations (detailed discussions of price regulation need not be furnished); (D) any other factors beyond the control of the registrant, such as other parties having control over the drilling of new wells, competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies which may affect the ability of the registrant to acquire additional reserves and supplies, or to maintain or increase the availability of reserves and supplies; and (E) any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractural obligations. See Item 303 of Regulation S-K.

(iv) If within the last three years the registrant has been unable to meet any significant delivery commitments, describe the circumstances concerning such events and the impact on the registrant.

Item 103. Legal proceedings.[1] Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions to Item 103. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or otherwise relating to the protection of the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

[1] Instruction 5 to this Item reflects changes proposed in Securities Act Release No. 6315 (May 8, 1981) [46 FR 25638].

A. Such proceeding is material to the business or financial condition of the registrant;

B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000. In addition, if a proceeding is disclosable under this Instruction, the registrant shall state the name and address of each governmental authority from which any compliance related reports relating to each such proceeding may be obtained, or, in lieu thereof, shall include a statement which indicates that such names and addresses will be furnished without charge to any interested person upon request and includes the name and address of the person to whom such request should be directed.

§ 229.200 Securities of the registrant.

Item 201. Market price of and dividends on the registrant's common stock and related stockholder matters.

(a) *Market information.* (1)(i) Identify the principal United States market or markets in which the registrant's common equity is being traded. Where there is no established public trading market for the common equity, furnish a statement to that effect. For purposes of this Item the existence of limited or sporadic quotations should not of itself be deemed to constitute an "established public trading market." In the case of foreign registrants, also identify the principal established foreign public trading market, if any, for the registrant's common equity.

(ii) If the principal United States market for such common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by Article 3 of Regulation S-X [17 CFR 210], as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for such equity.

(iii) If the principal United States market for such common equity is not an exchange, state the range of high and low bid information for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by Article 3 of Regulation S-X, as regularly quoted in the automated quotation system of a registered securities association, or where the equity is not quoted in such a system, the range of reported high and low bid quotations, indicating the source of such quotations. Indicate that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Where there is an absence of an established public trading market, reference to quotations shall be qualified by appropriate explanation.

(iv) Where a foreign registrant has identified a principal established foreign trading market for its common equity pursuant to paragraph (a)(1) of this Item, also provide market price information comparable to that required for the principal United States market, including the source of such information. Such prices shall be stated in the currency in which they are quoted. The registrant may translate such prices into United States currency at the currency exchange rate in effect on the date the price disclosed was reported on the foreign exchange. If the primary United States market for the registrant's common equity trades using American Depositary Receipts, the United States prices disclosed shall be on that basis.

(v) If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or a proxy or information statement filed pursuant to the Exchange Act, the document also shall include price information as of the latest practicable date, and, in the case of securities to be issued in connection with an acquisition, business combination or other reorganization, as of the date immediately prior to the public announcement of such transaction.

(2) Where at the time of filing there is no established United States public trading market for the registrant's common equity, indicate the amount of common equity (i) which is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant; (ii) which may be sold pursuant to Rule 144 under the Securities Act [17 CFR 230.144] or which may be registered under the Securities Act for sale by security holders; and/or (iii) which is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

(3) Where there is an established United States public trading market for the registrant's common equity, indicate the amount of common equity that (i) is the subject of a registration statement filed pursuant to Rule 462A (a)(1)(i) and (ii) under the Securities Act, (ii) the issuer has publicly proposed to offer publicly, and/or (iii) the registrant knows will, or reasonably expects will, be registered under the Securities Act in the proximate future for sale by security holders, the offering of which could have a material effect on the market price of the registrant's common equity.

(b) *Holders.* (1) Set forth the approximate number of holders of common equity of the registrant as of the latest practicable date.

(2) If the information called for by this paragraph (b) is being presented in a registration statement filed pursuant to the Securities Act or a proxy statement or information statement filed pursuant to the Exchange Act that relates to an acquisition, business combination or other reorganization, indicate the effect of such transaction on the amount and percentage of present holdings of the registrant's common equity and the registrant's present commitments with respect to the issuance of shares of common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on the common equity by the registrant for the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by § 210.3 of Regulation S-X. Describe briefly (where appropriate quantify) any restrictions (including, where appropriate, restrictions on the ability of registrant's subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances) that currently materially limit the registrant's ability to pay such dividends or that the registrant reasonably believes are likely to limit materially the future payment of dividends on the common equity.

(2) Where registrants have a record of paying no cash dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, to make a statement of that fact in the filing. Registrants which have a history of paying cash dividends also are encouraged to indicate whether they currently expect that comparable cash dividends will continue to be paid in the future and, if not, the nature of the

change in the amount or rate of cash dividend payments.

Instructions to Item 201. 1. Registrants, the common equity of which is traded on more than one securities exchange registered under the Exchange Act, are required to indicate each such exchange pursuant to paragraph (a)(1)(i) of this Item; such registrants, however, need only report one set of price quotations pursuant to paragraph (a)(1)(ii) of this Item; where available, these shall be the prices as reported in the consolidated transaction reporting system and, where the prices are not so reported, the prices on the most significant (in terms of volume) securities market for such shares.

2. Market prices and dividends reported pursuant to this Item shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

3. The computation of the approximate number of holders of registrant's common equity may be based upon the number of record holders or also may include individual participants in security position listings. See Rule 17Ad–8 under the Exchange Act (17 CFR 240.17Ad–8). The method of computation that is chosen shall be indicated.

4. If the registrant is a foreign issuer, describe briefly:

A. Any governmental laws, decrees or regulations in the country in which the registrant is organized that restrict the export or import of capital, including, but not limited to, foreign exchange controls, or that affect the remittance of dividends or other payments to nonresident holders of the registrant's common equity; and

B. All taxes, including withholding provisions, to which United States common equity holders are subject under existing laws and regulations of the foreign country in which the registrant is organized. Include a brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding. If there is no such treaty, so state.

5. As used in this Item, common equity includes any class of common stock or any equivalent interest such as a beneficial interest in a REIT.

Item 202. Description of registrant's securities.

Note.—If the securities being registered have been accepted for listing on an exchange, the exchange may be identified. The document should not however, convey the impression that the registrant may apply successfully for listing of the securities on an exchange or that the underwriters may request the registrant to apply for such listing, unless there is reasonable assurance that the securities to be offered will be acceptable to a securities exchange for listing.

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights; (vi) liquidation rights; (vii) preemption rights; and (viii) liability to further calls or to assessment by the registrant and for liabilities of the registrant imposed on its stockholders under state statutes (*e.g.*, to laborers, servants or employees of the registrant), unless such disclosure would be immaterial because the financial resources of the registrant or other factors make it improbable that liability under such state statues would be imposed.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the registrant of the shares.

(5) Describe briefly and discuss any charter or by-law provision of, or any contractual or other arrangement entered into by, the registrant that (i) restricts the alienability of any voting securities to be registered; (ii) pertains to the classification of the board of directors or requires action of the board of directors by a super-majority vote; (iii) permits cumulative voting where the board of directors is classified; (iv) requires action by the stockholders to be taken by a vote of more than the minimum number required by applicable law; (v) discriminates against any existing or prospective stockholder of any class of voting securities of the registrant as a result of such stockholder's owning a substantial amount of securities; or (vi) has the intent or effect of delaying, deterring or preventing a change in the control of the registrant. Such discussion shall describe the purposes, effects, operation, advantages and disadvantages of any such provision or arrangement. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the registrant to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceeding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt Securities.* If debt securities are to be registered, state the title of such securites and describe such of the matter listed in paragraphs, (b)(1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the registrant; where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth in the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or

substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities; no information need by given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the registrant of the securities;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in section 1232 of the Internal Revenue Code [26 U.S.C. 1232], or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to section 1232; and

(10) The name of the trustee(s) and the nature of any material relationship with the registrant or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding; and

(4) Any other material terms of such rights on warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of Item 202) of the rights evidenced thereby.

(e) *Market information for securites other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for such securities (as that term is used in Item 201 of Regulations S–K) provide market information with respect to such securities comparable to that required by paragraph (a) of Item 201 of Regulation S–K.

Instructions to Item 202. 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, inlcuding the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulive; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of intrest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, it convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. If the registrant is a foreign registrant, include in the description of the securities:

A. A brief description of any limitations on the right of nonresident or foreign owners to hold or vote such securities imposed by foreign law or by the charter or other constituent document of the registrant, or if no such limitations are applicable, so state;

B. A brief description of any governmental laws, decrees or regulations in the country in which the registrant is organized affecting the remittance of dividends, interest and other payments to nonresident holders of the securities [other than common stock] being registered;

C. A brief outline of all taxes, including withholding provisions, to which United States security holders (other than common stockholders) are subject under existing laws and regulations of the foreign country in which the registrant is organized; and

D. A brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding (other than on common stock) or, if there is no such treaty, so state.

3. Section 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa et seq., as amended ("Trust Indenture Act"), shall not be deemed to require the inclusion in a registration statement or in a prospectus of any information not required by this Item.

4. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the descretion of the registrant, the registrant should describe such provision); and

C. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published

§ 229.300 Financial information.

Item 301. Selected financial data.[2] Furnish in comparative columnar form the selected financial data for the registrant referred to below, for

(a) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to Item 301. 1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the table of financial data: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in § 210.5–02.28(a) of Regulation S–X [17 CFR 210]; ratio of earnings to combined fixed charges and preferred dividends and the ratio of earnings to fixed charges, if required by Instruction 5 to this Item; and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. A reference shall be made to any qualifications in the auditor's opinion with respect to the financial statements from which such data is derived.

[2] Instructions 2, 4 and 5 to Item 301 reflect changes proposed in Securities Act Release No. 6285 (Feb. 6, 1981) [46 FR 12756].

3. Those registrants that are required to provide five year summary information in accordance with Statement of Financial Accounting Standard No. 33, "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the registrant in the table of selected financial data and in this Item shall mean the registrant and its subsidiaries consolidated, except in the case of the ratio of earnings to combined fixed charges and preferred dividends and, if required, the ratio of earnings to fixed charges where a total enterprise ratio is required. (See Instruction 5 to this Item.)

5. For purposes of presenting the ratio of earnings to combined fixed charges and preferred dividends and, if required, the ratio of earnings to fixed charges ("the ratios") the following rules and definitions shall apply:

A. If debt or preferred stock securities are being registered, the registrant is required to present the ratio of earnings to combined fixed charges and preferred dividends; however, additional disclosure of the ratio of earnings to fixed charges is also required in debt or preferred stock registration statements if the registrant's ratio of earnings to fixed charges is materially different from the combined ratio.

B. The ratio(s) shall be computed on the basis of the total enterprise of the registrant. That is, the revenues and expenses should include not only the amounts reflected in consolidated income statements but also revenues and expenses of other activities not consolidated. In other words, the total enterprise should be considered to include the registrant, its majority-owned subsidiaries, as if they were consolidated, its proportionate share of 50-percent-owned persons, and its share of distributed income from less-than-50-percent-owned persons. If the registrant has guaranteed debt of another person (such as a supplier), the amount of fixed charges associated with such debt need not be included in the computation of the ratio unless the registrant has been required to satisfy the guarantee or its is probable that the registrant will be required to honor the guarantee and the amount can be reasonably estimated. A footnote to the ratio should disclose the amount of fixed charges associated with such guaranteed debt and whether it is included in the computation of the ratio.

C. "Earnings" shall be computed after all operating and income deductions (including results of discontinued operations and gain or loss from disposal of a segment of a business, but excluding extraordinary items and the cumulative effect of accounting changes) except fixed charges, taxes based on income, and minority interest in income or loss of subsidiaries and after eliminating undistributed income of less-than-50-percent-owned persons. The registrant, at its option, may present an additional ratio based only on continuing operations of the total enterprise.

(i) If a less-than-50-percent-owned person accounted for using the equity method has sustained a loss, such loss would also be eliminated except in the situation where the registrant has guaranteed the debt of this person. In this case, the registrant's equity in the loss would be included in "earnings" and the "fixed charges" (see D. below) would include the interest associated with the guaranteed debt.

(ii) In the case of public utilities, the allowance for funds used during construction shall be added to gross income but not deducted from interest expense. Other registrants which capitalize interest shall include capitalized interest in fixed charges but shall not add such amounts to gross income.

D. The term "fixed charges" shall mean the total of (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in instances where a separate ratio of earnings to fixed charges is presented, preferred stock dividend requirements of subsidiaries, excluding in all cases items which would be or are eliminated in consolidation.

E. The term "preferred stock" shall include all types of preferred and preference stocks. The dividend requirements of the outstanding preferred stock (determined as set forth in the following sentences) shall be added to "fixed charges" (as defined above) in determining the denominator to be used in the computation of the ratio.

(i) The preferred stock dividend requirements shall be increased by an amount equivalent to the income tax that would be required to obtain an after-tax income sufficient to cover such dividend requirements. The tax rate shall be based on the relationship of the applicable actual income tax provision to income before income taxes, extraordinary items, and cumulative effect of accounting changes.

F. If the ratio computation indicates a negative or less than one-to-one coverage, disclosure of the ratio should not be made. Instead, a statement of this fact shall be made and the dollar amount of the coverage deficiency stated.

G. Pro forma ratio(s) shall be presented in the case of a debt or preferred stock refinancing if the effect of the refinancing changes the historical ratio(s) by 10 percent or more. If the pro forma ratio is not presented, a footnote should disclose the reason for omission.

(i) The pro forma ratio(s), if applicable, shall be presented for only the most recent fiscal year.

(ii) The only adjustement which shall be made to the corresponding historical ratio(s) are to give effect to the net increase or decreases in interest expense or preferred dividends due to the proposed issuance of new debt or preferred stock and the corresponding retirement of any debt or preferred stock presently outstanding but which will be retired with the proceeds from the proposed offering.

6. If interim period financial statements are required to be presented by Article 3 of Regulation S–X, registrants should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, registrants shall provide the information on a comparative basis unless unnecessary to an understanding of such updating information.

Item 302. Supplementary financial information.

(a) *Selected quarterly financial data.* Registrants specified in paragraph (a)(5) of this Item shall provide the information specified below.

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss), for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by Article 3 of Regulation S–X [17 CFR 210].

(2) When the data supplied pursuant to this paragraph (a) vary from the amounts previously reported on the Form 10–Q [17 CFR 249.308a] filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported and describe the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by Article 3 of Regulation S–X, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(4) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, an enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by this paragraph (a).

(5) This paragraph (a) applies to any registrant that meets both of the following tests:

(i) First test. The registrant:

(A) Has securities registered pursuant to section 12(b) of the Exchange Act (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of

section 15(d) of the Exchange Act and has securities which also meet the criteria set forth in paragraphs (C)(*1*) and C(*2*) immediately following; or

(C) Has securities registered pursuant to section 12(g) of the Exchange Act which also

(*1*) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(*2*) Meet the following criteria:

(*i*) Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to section 5 of the Exchange Act; for purposes of this paragraph, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market;

(*ii*) There continue to be 800 or more holdes of record, as defined in Rule 12g5–1 [§ 240.12g5–1] under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;

(*iii*) The registrants continues to be a United States corporation;

(*iv*) There are 300,000 or more of such securities outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(*v*) In addition, the registrant shall meet two of the three following requirements:

(*A*) The shares described in paragraph (5)(i)(C)(*2*)(*iv*) of this Item continue to have a market value of at least $2.5 million;

(B) The minimum representative bid price of such stock is at least $5 per share; or

(C) The registrant continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions to Paragraph (a)(5)(i)(C)(2)(v). 1. The computation required by paragraphs (*v*)(*a*) and (*v*)(*b*) shall be based on the average of the closing representative bid prices as reported by the National Association of Securities Dealers Automated Quotation System in accordance with Rule 11Ac1–2 [17 CFR 240.11Ac1–2] under the Exchange Act for the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by paragraph (*v*)(*c*) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

(b) *Information on the effects of changing prices.* Information on the effects of changing prices on business enterprises shall be presented by registrants (except registered investment companies) subject to the reporting provisions of Statements of Financial Accounting Standards Nos. 33, 39, 40, 41, and 46, "Financial Reporting and Changing Prices," in accordance with the specific provisions of those Statements.

Item 303. Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a) (1), (2) and (3) with respect to liquidity, capital resources and results of operations and also shall provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources.* (i) Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

(3) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

(ii) Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.

(iii) To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

(iv) For the three most recent fiscal years of the registrant, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the registrant has been engaged in business, whichever period is shortest, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

Instructions to Paragraph 303(a). 1. The registrant's discussion and analysis shall be of the financial statements and of other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's

understanding. However, where trend information is relevant, reference to the five year selected financial data appearing pursuant to Item 301 of Regulation S-K may be necessary.

2. The purpose of the discussion and analysis shall be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided pursuant to this Item need only include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's financial statements.

3. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shll be described to the extent necesary to an understanding of the registrant's businesses as a whole; *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the registrant shall indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally shall be discussed on both a long-term and short-term basis. The issue of liquidity shall be discussed in the context of the registrant's own business or businesses. For example a discussion of working capital may be appropriate for certain manufacturing, industrial or related operations but might be inappropriate for a bank or public utility.

6. Where financial statements of the registrant, presented or incorporated by reference in the registration statement, are required by § 210.4-08(e)(3) of Regulation S-X [17 CFR Part 210] to include disclosure of restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances, the discussion of liquidity shall include a discussion of the nature and extent of such restrictions and the impact such restrictions have had and are expected to have on the ability of the registrant to meet its cash obligations.

7. Registrants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b-6 under the Exchange Act [17 CFR 240.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

8. Registrants that are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," (SFAS 33) may combine such explanations with the registrant's discussion and analysis required pursuant to this Item or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined, the discussion of the impact of inflation otherwise required by this Item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign registrants need not comply with SFAS 33 but if, in its home country, a foreign registrant must satisfy requirements that are analogous to SFAS 33, then such analogous presentation shall be given.

9. Registrants that are not required to provide supplementary information in accordance with SFAS 33 (including foreign private registrants) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

10. All references to the registrant in the discussion and in this Item shall mean the registrant and its subsidiaries consolidated.

11. Foreign private registrants also shall discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals.

(b) *Interim periods.* If interim period financial statements are required to be presented by Article 3 of Regulation S-X, a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (b)(1) and (2) of this Item. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the registrant.

(2) *Material changes in results of operations.* Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the registrant is required to or has elected to provide an income statement for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the registrant has elected to provide an income statement for the twelve month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve month period and the twelve month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. Notwithstanding the above, if for purposes of a registration statement a registrant subject to paragraph (b) of § 210.3-06 of Regulation S-X provides a statement of income for the twelve month period ended as of the date of the most recent interim balance sheet provided in lieu of the interim income statements otherwise required, the discussion of material changes in that twelve month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

Instructions to Paragraph (b) of Item 303. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim

financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the registrant may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed; *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the condensed financial statements. The information provided shall include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's condensed interim financial statements.

4. The registrant's discussion of material changes in results of operations shall identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

5. The registrant shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

6. Registrants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b–6 under the Exchange Act [17 CFR 249.3b–6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

Item 304. Disagreements with accountants on accounting and financial disclosure. If, (a) within the twenty-four months prior to the date of the most recent financial statements, a Form 8–K under the Exchange Act [17 CFR 249.308] reporting a change of accountants has been filed, (b) included in such Form 8–K there was a reported disagreement on any mater of accounting principles or practices or financial statement disclosure, (c) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (d) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

§ 229.400 Management and certain security holders.

Item 401. Directors and executive officers.

(a) *Identification of directors.* List the names and ages of all directors of the registrant and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; describe briefly any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected as a director or nominee.

Instructions to Paragraph (a) of Item 401. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such shall be named in response to this Item. In this regard, with respect to proxy statements, see Rule 14a–4(d) under the Exchange Act [17 CFR 240.14a–4(d)].

3. If the information called for by this paragraph (a) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. With regard to proxy statements in connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of executive officers.* List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and describe briefly any arrangement or understanding between him and any other person(s) (naming such person) pursuant to which he was or is to be selected as an officer.

Instructions to Paragraph (b) of Item 401. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such shall be named in response to this Item.

3. The information regarding executive officers called for by this paragraph (b) need not be furnished in proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act [17 CFR 240.14a–101] by those registrants relying on general instruction G of Form 10–K under the Exchange Act [17 CFR 249.310]. *Provided,* That such information is furnished in a separate item captioned "Executive officers of the registrant," and included in part I of the registrant's annual report on Form 10–K.

(c) *Identification of certain significant employees.* Where the registrant employs persons such as production managers, sales managers, or research scientists who are not executive officers but who make or are expected to make significant contributions to the business of the registrant, such persons shall be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act or was exempt from section 13(a) by section 12(g)(2)(G) of such Act immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable.

(d) *Family relationships.* State the nature of any family relationship between any director, executive officer, or person nominated or chosen by the registrant to become a director or executive officer.

Instruction to Paragraph 401(d). The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this Item, including his principal occupations and employment during

that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (c) of this Item has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a–1, et seq., as amended, naming such company.

(f) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years and that are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant:

(1) A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws;

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this Item, or to be associated with persons engaged in any such activity; or

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated.

Instructions to Paragraph (f) of Item 401. 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the registrant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed pursuant to Rule 14a–6 or 14c–5 under the Exchange Act [17 CFR 240.14a–6 and 17 CFR 240.14c–5]), as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by this paragraph (f) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

Item 402. Management remuneration and transactions.[3]

(a) *Remuneration.* Furnish the information required in the table below, in substantially the tabular form specified, concerning all remuneration (except remuneration for which disclosure is required by paragraph (b)(2) or (d) of this Item) paid or distributed through the latest practicable date to, or accrued through such date for the account of, the following persons and group for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year, or, in specified instances, certain prior fiscal years.

(1) *Five executive officers or directors.* Each of the five most highly compensated executive officers or directors of the registrant as to whom the total remuneration required to be disclosed in Columns C1 and C2 below would exceed $50,000, naming each such person.

(2) *All officers and directors.* All officers and directors of the registrant as a group, stating the number of persons in the group without naming them.

(3) *Specified Tabular Format.*

Renumeration Table

(A)	(B)	(C)		(D)
		Cash and cash-equivalent forms of remuneration		
		(C1)	(C2)	
Name of individual or number of persons in group.	Capacities in which served.	Salaries, fees, directors' fees, commissions, and bonuses.	Securities or property, insurance benefits or reimbursement, personal benefits.	Aggregate of contingent forms of remuneration.

Instructions to Paragraph (a) Item 402. 1. *Foreign private issuers.* Foreign private issuers (other than North American issuers) may respond to all of Item 402 by indicating the aggregate payments or benefits paid to or accrued on behalf of all directors and executive officers as a group unless such registrants disclose to their security holders or otherwise make public the information specified in this Item for individually named directors and executive officers, in which case such information also shall be disclosed.

2. *Columns A and B: Persons subject to paragraph (a).* A. This paragraph (a) of Item 402 applies to any individual who was an executive officer, officer, or director of the

[3] Paragraphs (d) and (e) of this Item reflect changes proposed in Securities Exchange Act Release No. 17517 (Feb. 5, 1981) [46 FR 12011].

registrant at any time during the fiscal year. However, subject to the last sentence of Instruction 3B to paragraph (a) of Item 402, information need not be given for any portion of the period during which such individual was not an executive officer, officer, or director of the registrant, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose remuneration is to be reported in the table, it is not necessary to report remuneration that would have been reported in the table had the individual been included in prior years. For example, if a bonus was accrued for an individual and expensed for financial reporting purposes prior to the individual's becoming an officer of the amount accrued and expensed for such bonus need not be reported. This paragraph (a) of Item 402 applies to executive officers, other officers and directors.

B. Registrants shall exercise a measure of flexibility in determining which individuals shall be named in the remuneration table in order to avoid anomalous results and to assure that disclosure document contain information on key policy-making members of management. Specifically, registrants may determine not to name a particular individual in the remuneration table when such individual otherwise might nominally be one of the five most highly remunerated executive officers or directors. The types of matters a registrant shall consider in exercising its discretion not to name an individual include:

(i) The distribution or accrual of an unusually large amount (such as a bonus or commission), otherwise required to be reflected in Column C1 or Column C2, which is not part of a recurring arrangement and is unlikely to continue under the terms of the plan or any similar plan; and

(ii) The distribution or accrual of amounts relating to overseas assignments which may be attributed predominantly to such assignments. However, a registrant shall not apply the above standards mechanically; consideration shall be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with the individual's actual level of remuneration, would give rise to a conclusion that the individual may be among the five most highly compensated, key policy-making executive officers or directors. While the criteria set forth above may be used to determine which of the executive officers or directors shall be named in the table, the same standards shall not be used as a basis for deleting such amounts from the remuneration table in response to paragraph (a)(2) of this Item. Thus, while the above standards might allow a particular individual not to be one of those individually named, all relevant amounts shall be reflected in the table's group totals with no exclusions based on the above standards. Moreover, if an individual is named in the table, the full amount of that individual's remuneration shall be included in the remuneration table in accordance with the instructions to paragraph (a) of Item 402.

3. *Column C information.* Column C shall include remuneration for services rendered during the fiscal year distributed to or for the account of the specified individual or group, or which is accrued and the measurement of benefits thereunder and the distribution or unconditional vesting thereof are not subject to future events. See Instruction 3E to paragraph (a) of Item 402. Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan, or arrangement previously included in the remuneration table for a prior fiscal year, and less any amount which would have been so included but for the fact that the individual was not, in the earlier period, reflected in the remuneration table either as a named individual or a member of the group. However, if this calculation results in credit, any such credit shall be reflected in Column D and not Column C. See Instruction 4B(ii) to paragraph (a) of Item 402. Column C shall include cash or cash-equivalent amounts distributed or accrued and shall be segregated into two subcolumns; the first, C1, shall include the forms of remuneration described in Instruction 3A to paragraph (a) of Item 402; the second, C2, shall include the forms of remuneration described in Instructions 3B, C and D to paragraph (a) of Item 402.

A. *Salaries.* All cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses shall be included in Column C1. Where the total amount of a bonus pool for the latest fiscal year under a bonus plan is known at the time remuneration information is filed with the Commission, but the amounts allocated to each participant will not be determined until after the information is filed, the registrant shall include a footnote indicating (i) that a bonus plan exists for the latest fiscal year, (ii) the individuals named in the table who are participants in the plan, and (iii) that amounts have not been allocated from the bonus plan to the individuals and thus are not included in the remuneration table. If the bonus pool participants are all officers and directors, the aggregate amount of the bonus accrual shall be reported in the group disclosure. In addition, registrants are required to disclose amounts subsequently allocated to the individuals named in the remuneration table for the next fiscal year.

B. *Securities or property.* The spread between the acquisition price, if any, and the fair market price of all securities or property acquired, under any contract, agreement, plan or arrangement (excluding remuneration for which disclosure is called for by paragraph 402(d)), for the benefit of any of the specified individuals or group, less any amount previously reported in the remuneration table for a prior fiscal year with respect to the same contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the following events occurs, or if the plan or arrangement contemplates that both such events may occur, the fair market price shall be determined as of the date during the fiscal year that the later event occurs:

(i) The recipient exercises an election (similar to the exercise of an option or right) in connection with the contract, agreement, plan or arrangement; or

(ii) The recipient becomes entitled without further contingencies to retain the securities or property.

The foregoing disclosure is required with respect to an exercise or entitlement realized within the last fiscal year, even though, as permitted by a plan, the exercise or entitlement occurs shortly after termination, in the same year, of employment of the participant who is otherwise subject to remuneration disclosure for that year.

C. *Life or health insurance; medical reimbursement plans.* The cost of premiums paid by the registrant or any of its subsidiaries on life or health insurance policies insuring any such individual or group (unless the sole beneficiary under the policy is the registrant or its subsidiaries), and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified individuals and the group shall be allocated to such individual and group and reflected in column C2. Information need not be furnished pursuant to this Instruction 3C for any costs under group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

D. *Personal benefits.* The value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in scope or terms of operation in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified individuals and the group, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified individuals.

(i) *Valuation.* Such benefits shall be valued on the basis of the registrant's and subsidiaries aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, shall be made in a footnote to the table. The registrant may choose to disclose such aggregate value rather than aggregate incremental costs in the table, in which event such footnote disclosure is not required.

(ii) *Conditional exclusion of personal benefits.* If the registrant cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table, provided that, after reasonable inquiry, the registrant has concluded that the aggregate amounts of such personal benefits which cannot be specifically or precisely ascertained do not in any event exceed $10,000 as to each individual or, in the case of a group, $10,000 for each individual in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

(iii) *Footnote disclosure.* If as to an individual named in the table an amount representing personal benefits included in Column C2 exceeds 10 percent of the aggregate amount disclosed in Columns C1 and C2 or $25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of Column C2 represented by such personal benefits and briefly describe the kinds of such benefits.

E. *Certain remuneration which is subject to future events.* Remuneration for a fiscal year under plans of the types described in Instruction 4 to paragraph (a) of Item 402 (excluding remuneration for which disclosure is called for by paragraphs (d) or (b)(2) of Item 402) shall be included in Column C for such fiscal year, if, as of the end of such fiscal year, such remuneration was distributed to or for the account of the specified individuals or group, or was accrued and the measurement and the distribution or unconditional vesting thereof were not subject to future events. If a plan provides for remuneration some of which is and some of which is not subject to future events, the former is reportable in Column D and the latter is reportable in Column C. Remuneration conditioned on substantial future service is subject to future events under this standard. Similarly, if the amount or value of, or entitlement to, remuneration is dependent on future earining performance or market values, such remuneration is subject to future events under this standard. However, if dependence on future events doe not represent a true contingency, remuneration shall be reported in Column C.

4. *Column D information.* Column D shall include remuneration of the specified individuals and group in whole or in part for services rendered during the fiscal year, including but not limited to the forms of remuneration described in paragraphs A through C of this Instruction 4, if such remuneration is properly expensed for financial reporting purposes, and the measurement of benefits thereunder or the distribution or unconditional vesting thereof is subject to future events, so that the remuneration is therefore not reportable in Column C. See Instruction 3E to Paragraph (a) of Item 402. Registrants need only report remuneration in Column D as it relates to the latest fiscal year and need not report amounts expensed in previous fiscal years.

A. *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* As to each of the specified individuals and groups, include as remuneration any amount expensed for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to contributions, payments, or accruals for the account of any such individual or group under any existing pension or retirement plans (except remuneration for which disclosure is required by paragraph (b)(2) of Item 402), annuity contracts, deferred compensation plans, or any other similar arrangements. Such remuneration shall be reflected in the amounts and for the fiscal year in which they are expensed under all such plans or arrangements, including plans qualified under the Internal Revenue Code.

B. *Incentive and compensation plans and arrangements.* (i) With respect to remuneration under incentive or compensation plans or arrangements (other than remuneration for which disclosure is called for by paragraph (d) of Item 402) pursuant to which the measure of benefits is based on objective standards or on securities (or an amount or value of securities) of the registrant or another person, granted, awarded or entered into at any time in connection with services to the registrant or its subsidiaries, include as remuneration as to each of the specified individuals and group any amount expensed for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to any such specified individual or group attributable to an interest in any such plan or arrangement.

(ii) If the registrant has expensed amounts for financial reporting purposes and reported such amounts in the remuneration table and, in a subsequent year, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes, for any proper reason, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited pursuant to this Instruction are so reflected in the table, include a footnote briefly stating the amount of such credit and describing such treatment. In situations in which there are several plans and virtually everyone in the remuneration table is a participant in each plan, to the extent that negative entries in Column D for individuals and for the group are attributable to the same factors, the footnote disclosure required by this Instruction may be generic in nature. If negative entries reflect changes in several types of plans or other factors not common to all individuals and the group, and separate disclosure would result in lengthy narrative, it is sufficient to provide a general explanation of the circumstances giving rise to negative entries without a separate explanation of the components of each negative entry for individuals or the group. Excessive detail shall be avoided.

(iii) The financial reporting expense (or credit) for any form of performance or other contingent compensation granted in tandem with options or rights under plans for which disclosure is called for by paragraph (d) of Item 402 shall be excluded from Column D, and the information required by Instruction 12 to paragraph (d) of Item 402 shall be presented.

C. *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified individuals and the group under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the registrant and its subsidiaries for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

5. *Transactions with third parties.* Paragraph (a) of Item 402, among other things, includes transactions between the registrant and a third party when the primary purpose of the transaction is to furnish remuneration to the individuals or group specified in that paragraph. Other transactions between the registrant and third parties in which persons specified in paragraph (a) of Item 402 have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interests of management and others in certain transactions, particularly paragraph (f) of Item 402. Paragraph (a) of Item 402 does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions shall be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to paragraph (a) of Item 402.

6. *Other permitted disclosure.* The registrant may provide additional disclosure through one or more footnotes to the table, through additional lines or columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

7. *Definition of "plan."* The term "plan" as used in Item 402 includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

(b) *Proposed remuneration.* (1) Describe briefly all remuneration payments proposed to be made in the future pursuant to any on-going plan or arrangement to the individuals and group specified in paragraph (a) of Item 402. The description shall include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

(2) As to defined benefit and actuarial plans, include (in addition to describing such plans pursuant to paragraph (b)(1) of Item 402) a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any supplementary or excess pension award plans or arrangements) to persons in specified remuneration and years-of-service classifications. Amounts presented in the pension table shall be straight life annuity amounts notwithstanding the availability of joint survivorship provisions. In addition, the registrant shall (i) describe the remuneration covered by the plan, including the relationship of such covered remuneration reported in the table as required by paragraph (a) of Item 402,

(ii) state the credited years of service under the plan for each of the individuals named in the table required by paragraph (a) of Item 402, and also their current remuneration covered by the plan if it differs substantially (by more than 10 percent for each individual) from that set forth in Column C1 of the paragraph (a) of Item 402 table, and (iii) indicate whether the benefit amounts listed in the table are subject to any deduction for Social Security or other offset amounts.

Example of Pension Table

Remuneration	Years of service				
	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

Instructions to Paragraph (b) of Item 402. 1. Paragraph (b)(1) requires a brief description of any remuneration plan or arrangement which is operable for more than the latest fiscal year, whether or not remuneration under such plan has been reported or is reportable pursuant to paragraphs (a), (c) or (d) of Item 402.

2. Remuneration levels set forth in the paragraph (b)(2) pension table shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest remuneration level in the pension table an amount equal to 120 percent of the highest amount of covered remuneration of any individual named in the table required by paragraph (a) of Item 402 for the fiscal year.

3. If the registrant has a defined benefit or actuarial pension plan or plans which is such that the use of the paragraph (b)(2) pension table is inappropriate to inform stockholders of the pension benefits that the paragraph (a) of Item 402 individuals may receive because the pension benefits are not determined primarily by final compensation (or average final compensation) and years of service (such as a plan where the annual benefit is determined by a summation of a certain amount or certain percentage of compensation for each year of the individual's entire career), the registrant shall describe the plan as required by paragraph (b)(2), together with the formula by which benefits are determined, and indicate the estimated annual benefits payable upon retirement at normal retiremant age for the individuals specified in paragraph (a) of Item 402. For purposes of this Instruction, normal retirement age shall mean normal retirement age as defined under the plan or, if not so defined, the earliest time at which a participant may retire without any benefit reduction because of age.

4. Under paragraph (b), a plan of deferred compensation for services as a director must be disclosed. In addition, if such arrangement is not standard for all directors, the name of each director participating in such arrangement and the amount of such remuneration earned by each shall be indicated. Cross references to the remuneration table required by Paragraph (a) of Item 402 may be used for this purpose. See also paragraph (c)(2) of Item 402.

(c) *Remuneration of directors.* (1) *Standard arrangements.* Describe any standard arrangement, stating amounts, by which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* If a director of the registrant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state the name of the director and the amount of such remuneration earned by each; if this information is given as to an individual named in the table required by paragraph (a), of Item 402, a cross reference may be used.

(d) *Options, warrants, or rights.* Furnish the following information specified in paragraphs (d) (1) through (4) immediately following as to all stock appreciation rights and options to purchase securities from the registrant or any of its subsidiaries which were granted to or exercised or realized by each director or executive officer named in answer to paragraph (a)(1) of Item 402, naming each such individual, and all directors and officers of the registrant as a group, without naming them, during the registrant's last fiscal year (or, if applicable, the alternate period specified in either Instruction 5 or Instruction 6 to paragraph (d) of Item 402 and as to all options and stock appreciation rights held by such persons at the end of the last fiscal year (or of such alternate period):

(1) As to options granted during the specified period, state

(i) The title and aggregate amount of securities subject to options;

(ii) The average per share option exercise price; and

(iii) If the option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(2) As to the exercise or realization of options or stock appreciation rights held in tendem with options granted during the secified period or prior thereto, state the net value of securities (market value less any exercise price) or cash realized during the specified period.

(3) As to all unexercised options or stock appreciation rights in tandem therewith held as of the end of the specified period, state (i) the title and aggregate amount of underlying securities; and (ii) the aggregate potential (unrealized) value of such options or rights, as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to options which are in tandem with stock appreciation rights, if any, shall be set forth separately.

(4) As to stock appreciation rights not in tandem with options, state:

(i) The number of rights granted during the specified period;

(ii) The average per share base price thereof;

(iii) The net value of the shares (market value) or cash realized during the specified period upon exercise or realization of any such rights, granted during the specified period or prior thereto;

(iv) The number of rights outstanding as of the end of the specified period; and

(v) The potential (unrealized) value of all such rights outstanding as of the end of the specified period (market value less any base price).

Instructions to Paragraph (d) of Item 402. 1. The term "options" as used in this paragraph includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given. The term "stock appreciation right" means a right representing a share of the registrant or another person under which right the holder may in the future realize compensation measurable by reference to the future market price of such share and payable in cash, securities, or other property, where a change in the market value of the share is properly taken into account in the expensing of such compensation for financial reporting purposes for the fiscal year in which the change in market value occurs. Thus, this definition may include interests in certain plans, such as some phantom stock plans, which are not denominated as stock appreciation right plans. For the purpose of this paragraph, if reference is made to a number of options or stock appreciation rights, such number shall correspond to the number of securities to which the options or rights relate.

2. The extension, regranting or material amendment of options or stock appreciation rights shall be deemed the granting of options and stock appreciation rights within the meaning of this paragraph.

3. If the options of rights relate to more than one class of securities, the information shall be given separately for each such class.

4. The information called for by this paragraph may be furnished in the form of

the table set forth in the Appendix to this Item.

5. If the information called for by this paragraph is required to be presented in a registration statement filed pursuant to the Securities Act on behalf of a registrant that is not subject to the reporting provisions of section 13(a) or section 15(d) of the Exchange Act, immediately prior to the filing of the registration statement, such information regarding options and stock appreciation rights shall be given for the period since the beginning of the registrant's last fiscal year through a date not more than 30 days prior to the date of filing of the registration statement, specifying such date. Such information may, but need not, be reported separately for option and stock appreciation right transactions during the past fiscal year and such transactions since the close of the last fiscal year through such specified date, and such information regarding options and stock appreciation rights held shall be given as of the specified date.

6. With regard to any registrant, if the information called for by paragraph (d)(3) is required to be presented, rather than incorporated by reference in a registration statement filed pursuant to the Securities Act, the information required by such paragraph shall be reported for all options and stock appreciation rights in tandem therewith (regardless of who holds them) as of a date not more than 30 days prior to the date of filing of the registration statement. Instructions 1 through 5 to paragraph (d) do apply.

7. Except as provided below, a registrant reporting option and stock appreciation right information on a fiscal year basis in its registration statement filed pursuant to the Securities Act or its proxy material filed pursuant to the Exchange Act, shall, if the total market value on the granting dates of securities underlying all options or stock appreciation rights granted since the end of the last fiscal year exceeds $50,000 for any executive officer or director named pursuant to paragraph (a) of Item 402, also present the following information as to such options and rights as of the most recent practicable date: (A) the title and aggregate amount of underlying securities; (B) the exercise or base price of such options or rights; and (C) if the exercise or base price was less than 100% of the market price of the underlying security on the date of the grant, such fact and the market price of the underlying security. Where the information called for by paragraph 402(d) is incorporated by reference, rather than presented, in a registration statement filed pursuant to the Securities Act, the registrant may, but need not, comply with this Instruction.

8. In calculating the potential (unrealized) value of outstanding rights or options, the value of an option or right shall be determined as though it had been exercised or realized on the valuation date, and without regard to the fact that actual realization of any or all benefits under the option or right may be subject to unsatisfied contingencies or conditions. All outstanding rights or options with exercise or base prices above the market price on the valuation date shall be disregarded in making this calculation; the total shall reflect only options or rights with positive unrealized values and shall not be reduced by negative unrealized values.

9. If securities rather than cash are received upon the exercise or realization of a stock appreciation right, the fair market value of said securities on the date of exercise or realization small be reported pursuant to this paragraph.

10. With regard to paragraphs (d)(3) and (4) registrants also may state, at their option, that portion of the potential (unrealized) value reported which relates to options and/or rights that are not currently vested, exercisable or realizable.

11. The base price of a stock appreciation right is the amount used to define benefits which are available only to the extent that the market price of the underlying security exceeds such amount. For example, a stock appreciation right with a base price of $10 (the market price on date of grant) provides for payment of a benefit equal to the amount by which the market price at time of exercise exceeds $10. In the case of a phantom stock right providing for payment of the full value of a share, without reduction by or payment of any amount, the base price is zero.

12. If a performance unit or other contingent compensation right (other than an option or stock appreciation right) is in tandem with an option or stock appreciation right, the existence of such right shall be disclosed either with information about options pursuant to paragraphs (d)(1) through (3) (if such right is in tandem with and option or with a stock appreciation right which is itself in tandem with an option) or with information about stock appreciation rights pursuant to paragraph (d)(4) (if such right is in tandem only with a stock appreciation right which is not itself in tandem with an option). The value realized from such rights shall be included as value realized upon exercise or realization of options or stock appreciation rights, as the case may be, and shall not be reported pursuant to paragraph (a) or (c) of Item 402; and the potential (unrealized) value of such rights shall be taken into account in determining the potential (unrealized) value of options or stock appreciation rights, as the case may be. See Instructions 8 and 13 to this paragraph (d).

13. For purposes of this paragraph, an option shall be deemed in tandem with a stock appreciation right, and a performance unit or other contingent compensation right will be deemed in tandem with an option or stock appreciation right, and vice versa in each instance, if the benefits under one represent an alternative to or reduce the benefits available under the other. Where rights or options are in tandem with one another, a registrant shall present, as potential (unrealized) value, the maximum amount which may be realized under such rights and/or options, if all were exercised and/or realized on the valuation date, in the manner most beneficial to the holder (without counting more that one of any benefits which are alternative to one another).

(e) *Indebtedness of management.* State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, (1) the largest aggregate amount of indebtedness outstanding at any time during such period, (2) the nature of the indebtedness and of the transaction in which it was incurred, (3) the amount thereof outstanding as of the latest practicable date, and (4) the rate of interest paid or charged thereon: (i) each director or officer of the registrant; (ii) each nominee for election as a director; and (iii) each associate of any such director, officer or nominee.

Instructions to Paragraph (e) of Item 402.

1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed $25,000 or one percent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

3. Notwithstanding Instruction 2 to paragraph (e), if the registrant or any of its subsidiaries is engaged primarily in the business of making loans, and loans to any of the specified persons in excess of $25,000 or one percent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However, if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T [12 CFR Part 220], such disclosure, *Provided* That the loans are not nonperforming, may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features. For purposes of this Instruction, "nonperforming" loans are loans which, at any time during the period specified, fall within any of the following categories: (a) loans accounted for on a non-accrual basis; (b) loans contractually past due 90 days or more as to interest or principal payments; (c) loans the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower; or (d) loans now current where there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. A renewal on current market terms at maturity will not be considered a renegotiation within the meaning of clause (iii) above.

4. If any indebtedness required to be described arose under section 16(b) of the

Exchange Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transactions, including the prices and number of shares involved.

5. If the information called for by this paragraph is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the information called for by this paragraph shall be presented for the last three fiscal years.

(f) *Transactions with management.* Describe briefly any transaction since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating the person's relationship to the registrant, the nature of the person's interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of registrant's voting securities; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant.

Instructions to Paragraph (f) of Item 402.

1. No information need be given in response to this paragraph as to any remuneration or other transaction reported in response to any other paragraph of Item 402 or as to any remuneration or transaction with respect to which information may be committed pursuant to any other paragraphs of this Item 402.

2. No information need be given in answer to this paragraph as to any transactions where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

C. The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $50,000; or

D. The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis.

3. It should be noted that this paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph where:

A. The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (f)(1) through (4) of this Item, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraph (f)(1) through (4) of this Item had an interest of less than 10 percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the registrant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale or assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. If the information prescribed by this Instruction is to be included in a registration statement filed on Form S–11 under the Securities Act [17 CFR 239.18], disclose the aggregate depreciation claimed by the seller for Federal income tax purposes, if acquired by the seller within five years prior to the transaction. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. If the information called for by this paragraph is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the period for which the information called for shall be reported is the previous three years.

7. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this paragraph. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in a particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(g) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the registrant's last fiscal year or any currently proposed transactions, to which any pension, retirement, savings or similar plan provided by the registrant or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own or record or beneficially more than five percent of the outstanding voting securities of the registrant;

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or

(5) The registrant or any of its subsidiaries.

Instructions to Paragraph (g) of Item 402. 1. Instructions 2, 3, 4 and 5 to paragraph (f) of Item 402 shall apply to this paragraph.

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this paragraph any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to this paragraph with respect to:

A. Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

B. Payment of remuneration for services not in excess of five percent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or

C. Any interest of the registrant or any of its subsidiaries which arises solely for its general interest in the success of the plan.

(h) *Transactions with promoters.* Registrants, filing a registration statement on Form S–1 under the Securities Act [17 CFR 239.11] or on Form 10 under the Exchange Act [17 CFR 249.210], that have been organized within the past five years, shall:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and shall identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, registrants also shall state the cost thereof to the promoter.

(i) *Termination of employment.* Describe, unless previously disclosed by the registrant in a proxy or information statement filed pursuant to section 14 of the Exchange Act, any remunerative plan or arrangement, including payments to be received from the registrant, with any individual named in the paragraph (a) of Item 402 remuneration table for the latest or the next preceding fiscal year, if such a plan or arrangement results or will result from the resignation, retirement or any other termination by such individual of employment with the registrant and its subsidiaries.

Instructions to Paragraph (i) of Item 402. 1. No information need be given in response to this paragraph as to any remuneration or other transactions reported in response to any other paragraphs of Item 402.

2. No information need be given in answer to this paragraph as to any plan or arrangement where the amount involved in the transaction, including all periodic payments or installments, does not exceed $50,000.

3. The term "previously disclosed" as used in this paragraph includes situations where the arrangements have been generally disclosed in prior proxy or information statements filed with the Commission, notwithstanding the fact that the precise amount to be received by a given individual has not been precisely indicated.

Appendix—Stock Options and Stock Appreciation Rights

The tables set forth below are illustrations of the presentation in tabular form of the information required by paragraph (d) of Item 402 of Regulation S–K and Instruction 3(c) to Item 9(d) of Schedule 14A under the Exchange Act [17 CFR 240.101] which also applies to Items 10(d) and 11(c) of Schedule 14A. Where the tables are being presented and Item 9, 10 or 11 of Schedule 14A is applicable to the disclosure, information shall be furnished for the five year period specified in Instruction 3(c) to Item 9(d) of Schedule 14A and the information in Table I as to shares sold and the bracketed reference at the foot of the table to options granted to employees shall be added.

Other tabular presentations, including the combination of the tables into one, are of course acceptable if they include the necessary data. Tabular presentation may not be appropriate if only a very few options or stock appreciation rights have been granted.

Table I—Stock Options and Tandem Rights

The following tabulation shows, as to certain directors and officers of the registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock options and stock appreciation rights in tandem therewith (if any): (i) the title and aggregate amount of securities subject to options granted during the specified period, (ii) the average per share option exercise price thereof, (iii) the net value of shares (market value less any exercise price) or cash realized during the specified period upon the exercise or realization of such options or rights granted during the specified period or prior thereto, (iv) the number of shares sold during the specified period of the same class as those so acquired, and (v) the title and aggregate amount of securities subject to all such options or rights outstanding as of the end of the specified period, and (vi) the potential (unrealized) value of such outstanding options and rights as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to tandem options granted during the specified period and outstanding at the end thereof are separately shown.

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of options without tandem rights				
Number of options with tandem rights				
Average per share exercise price [1]	$	$	$	$
Exercised — to —: Net value realized in shares (market value less any exercise price) or cash	$	$	$	$
Sales — to —: [2]				

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Outstanding at —:				
Number of options wthout tandem rights				
Number of options wth tandem rights				
Potential (unrealized) value—(market value less exercises or base price)[3]				
In addition, during the period employees were granted options and tandem rights for a total of —— shares at an average option or base price per share of $——.[4]				

[1] If the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date must be disclosed.
[2] Sales by directors and officers who exercised options during the period from —— to ——.
[3] Of the potential (unrealized) value at the end of the period —— percent relates to exercisable options and/or tandem rights, and —— percent relates to unexercisable options and/or tandem rights.
[4] The numbers of options or rights set forth above correspond to the numbers of shares to which they relate. All share figures have been adjusted in accordance with the terms of the options or rights to reflect the stock split in 19—— and, where applicable, to give effect to share dividends.

Table II—Stock Appreciation Rights Not in Tandem With Options

The following tabulation shows, as to certain directors and officers of the registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock appreciation rights (including interests in certain phantom stock plans): (i) the number of such rights granted during the specified period, (ii) the average per share base price thereof, (iii) the net value of shares (market value) or cash realized during the specified period upon exercise or realization of any such rights granted during the specified period or prior thereto, (iv) the number of such rights outstanding as of the end of the specified period, and (v) the potential (unrealized) value of all such rights outstanding as of the end of the specified period (market price less any base price).

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of rights				
Average base prices	$	$	$	$
Net value realized in shares (market value) or cash	$	$	$	$
Outstanding at —:				
Number of rights				
Potential (unrealized) value (market value less any base price)[1]	$	$	$	$
In addition, during the period employees were granted rights relating to a total of —— shares at an average base price of $—— per share.[2]				

[1] Of the potential (unrealized) value at the end of period, —— percent relates to exercisable rights, and —— percent relates to unexercisable rights.
[2] The numbers of rights set forth above correspond to the numbers of shares to which they relate. All stock appreciation rights figures have been adjusted in accordance with the terms of the rights to reflect the stock split in 19—— and, where applicable, to give effect to share dividends.

Item 403. Security ownership of certain beneficial owners and management.[4]

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percentage of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act [17 CFR 240.13d-3(d)(1)].

(1) Title of Class	(2) Name and Address of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in Rule 13d-3(d)(1) under the Exchange Act.

(1) Title of class	(2) Name of beneficial owner	(3) Amount of nature of beneficial ownership	(4) Percent of class

[4] Instructions 1 and 5 to Item 403(a) reflect changes proposed in Securities Exchange Act Release No. 17517 (Feb. 5, 1981) [46 FR 12011].

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions to Item 403. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act [17 CFR 240.13d-3(d)(1)]. For purposes of paragraph (b) of this Item, if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the registrant as a group, does not exceed one percent of the class so owned, the registrant may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk, an explanatory footnote or other similar means.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d-3[17 CFR 240.13d-3] under the Exchange Act. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a) of this Item, the registrant may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure shall be made to avoid confusion. For purposes of paragraph (b) of this Item, in computing the aggregate number of shares owned by directors and officers of the registrant as a group, the same shares should not be counted more than once.

6. Paragraph (c) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

7. Where the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the registrant pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

§ 229.500 Registration statement and prospectus provisions.

Item 501. Forepart of registration statement and outside front cover page of prospectus.

The facing page of every registration statement shall set forth the approximate date of proposed sale to the public. Immediately following such facing page, there shall be included a cross reference sheet showing the location in the prospectus of the information required to be included in the prospectus in response to the items of the form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted from the prospectus, a statement to that effect shall be made in the cross reference sheet. The cross reference sheet need not be included in the prospectus. The following information (to the extent appropriate) shall appear on the outside front cover page of the prospectus with appropriate cross references to more detailed discussion elsewhere in the prospectus:

(a) Name of the registrant and, in the case of a foreign private registrant, an English translation of such name. Where the name of the registrant is the same as that of another well-known company and it appears likely that the registrant may be confused with the other company, or where the name indicates a line of business in which the regitrant is not engaged or is engaged to only a limited extent, a statement may be necessary to prevent the confusion of the two companies or to remove a misleading inference that may be drawn from the name as to the nature of the registrant's business. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to preclude confusion of the companies or misleading inferences from registrant's name. Such disclosure or name change is not necessary in the case of an established registrant that over a period of years has changed the general character of its business and the investing public is aware generally of the change and the character of the registrant's present business;

(b) Title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);

(c) Where any of the securities to be registered are to be offered for the

account of security holders, a statement to that effect;

(d) Reference to the existence, where applicable, of material risks in connection with the purchase of the securities, printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded, with a cross reference to further discussion in the prospectus;

(e) The following statement in capital letters printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

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;

(f) In the case of any preliminary prospectus that is circulated by registrants not subject to the reporting provisions of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement, a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered;

(g) The information called for by the following table, in substantially the tabular form indicated, as to all securites to be registered (estimated, if necessary):

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit			
Total			

(h) In the case of any prospectus to be used prior to the effective date of the registration statement, in red ink, the caption "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body of such prospectus:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. 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.;

(i) Any legend or information required by the law of any State in which the securities are to be offered; and

(j) The date of the prospectus.

Instructions to Item 501. 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only commissions paid by the registrant or selling security holders in cash are to be included in the table. Commissions paid by other persons, and other consideration to the underwriters, shall be set forth in a note to the table with a reference thereto in the second column of the table. Any finder's fee or similar payments shall be disclosed appropriately. 2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the lastest practicable date.

3. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no such arrangements have been made, so state. The following tabular presentation of the total maximum and minimum securities to be offered shall be combined with the table required above:

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total minimum			
Total maximum			

4. Where an underwriter has received an over-allotment option, maximum-minimum information shall be presented in the price table, or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option shall be described in response to Item 508 of Regulation S–K rather than on the cover page.

5. The total of "other expenses of issuance and distribution" called for by Item 511 of Regulation S–K, stated separately for the registrant and for the selling security holders, if any, shall be set forth in a note to the net proceeds column of the distribution table.

Item 502. Inside front and outside back cover pages of prospectus.

The following information, to the extent applicable, shall appear on the inside front cover page of the prospectus (except that the information required by paragraphs (e) and (g) of this Item may be set forth on the outside back cover page).

(a) *Available information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement shall:

(1) State that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission;

(2) State that reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act proxy and information statements) and other information filed by the registrant can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates; and

(3) Name any national securities exchange on which the registrant's securities are listed and state that reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act proxy and information statements,) and other information concerning the registrant can be inspected at such exchanges.

(b) *Reports to security holders.* Where a registrant will not be required to deliver an annual report to security holders (or holders of American depository receipts) pursuant to section 14 of the Exchange Act or stock exchange requirements, describe briefly the nature and frequency of reports that will be given to such holders, specifying whether or not such reports will contain financial information that has been examined and reported upon, with an opinion expressed, by an independent public or certified public accountant, and, in the case of the reports of a foreign private registrant that will not contain financial information prepared in accordance with United States generally accepted accounting principles, state whether the report will include a reconciliation of such

information with such accounting principles.

(c) *Incorporation by reference.* Where any document or part thereof is incorporated by reference in the registration statement but not delivered with the prospectus, include an undertaking to provide without charge to each person to whom a prospectus is delivered, upon written or oral request of such person a copy of any and all of the information that has been incorporated by reference in the registration statement (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates), and the name, address and telephone number of the person to whom such a request is to be directed.

(d) *Stabilization.* (1) If the registrant or any of the underwriters knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the offering of the registered securities, set forth a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (Identify each class of securities in which such transactions may be effected) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON (Identify each exchange on which stabilizing transactions may be effected; if none, omit this sentence.) SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

(2) If the stabilizing began prior to the effective date of the registration statement, set forth the amount of securities bought, the prices at which bought and the period within which they were bought.

(3) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offering period, there shall be set forth, by supplement or otherwise, in the prospectus used in connection with such reoffering (i) the amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought, (ii) the amount of the offered securities subscribed for during such period, (iii) the amount of the offered securities subscribed for by the underwriters during such period, (iv) the amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold, and (v) the amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Delivery of prospectuses by dealers.* The legend below shall be set forth inserting the expiration date of the period prescribed by section 4(3) of the Securities Act and Rule 174 thereunder [17 CFR 230.174] except that this legend need not be included if, pursuant to Rule 174, dealers are not required to deliver a prospectus, or if the exemption provided by section 4(3) of the Securities Act is not applicable because of the provisions of section 24(d) of the Investment Company Act. If such expiration date is not known on the effective date of the registration statement it shall be included in the prospectus, copies of which are required to be filed pursuant to Rule 424(b) under the Securities Act [17 CFR 230.424(b)]. The following legend shall be printed in bold-face or italic type at least as large as eight-point modern type and at least two points leaded:

United (insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscritions.

(f) *Enforceability of civil liabilities against foreign persons.* In the case of a foreign private registrant, a statement of how the enforcement by investors of civil liabilities under the Federal securities laws may be affected by the fact that the registrant is located in a foreign country, that certain of its officers and directors are residents of a foreign country, that certain underwriters or experts named in the registration statement are residents of a foreign country, and that all or a substantial portion of the assets of the registrant and of said persons are located outside the United States. Such disclosure need not be included on the inside front cover page of the prospectus, if it is included, under appropriate caption, elsewhere in the forepart of the prospectus.

(1) Such disclosure shall indicate:

(i) Whether investors will be able to effect service of process within the United States upon such persons;

(ii) Whether investors will be able to enforce against such persons judgments obtained in United States courts predicated upon the civil liability provisions of the Federal securities laws;

(iii) Whether the appropriate foreign courts would enforce judgments of United States courts obtained in actions against such persons predicated upon the civil liability provisions of the Federal securities laws; and

(iv) Whether the appropriate foreign courts would enforce, in original actions, liabilities against such persons predicated solely upon the Federal securities laws.

(2) If any portions of such disclosures are stated to be based upon an opinion of counsel, such counsel shall be named in the prospectus and an appropriate manually signed consent to the use of such name and opinion shall be included as an exhibit to the registration statement.

(g) *Table of contents.* Include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each such section or subdivision begins.

Item 503. Summary information and risk factors.

(a) *Summary.* Registrants should include a summary of the information contained in the prospectus where the length or complexity of the prospectus makes such a summary appropriate.

(b) *Address and telephone number.* Registrants shall include in the forepart of the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) *Risk factors.* Registrants, where appropriate, shall set forth on the page immediately following the cover page of the prospectus (or following the summary, if included) under an appropriate caption, a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common stock or securities convertible into or exercisable for common stock are being offered, the absence of a previous market for the registrant's common stock.

Item 504. Use of proceeds. State the principal purposes for which the net

proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose. Where registrant has no current specific plan for the proceeds, or a significant portion thereof, the registrant shall so state and discuss the principal reasons for the offering.

Instructions to Item 504. 1. Where less than all the securities to be offered may be sold and more than one use is listed for the proceeds, indicate the order of priority of such purposes and discuss the registrant's plans if substantially less than the maximum proceeds are obtained. Such discussion need not be included if underwriting arrangements with respect to such securities are such that, if any securities are sold to the public, it reasonably can be expected that the actual proceeds will not be substantially less than the aggregate proceeds to the registrant shown pursuant to Item 501 of Regulation S–K.

2. Details of proposed expenditures need not be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. Consideration should be given as to the need to include a discussion of certain matters addressed in the discussion and analysis of registrant's financial condition and results of operations, such as liquidity and capital expenditures.

3. If any material amounts of other funds are necessary to accomplish the specified purposes for which the proceeds are to be obtained, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, set forth the interest rate and maturity of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness other than short-term borrowings used for working capital.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, describe briefly and state the cost of the assets and, where such assets are to be acquired from affiliates of the registrant or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the registrant.

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included, except, if such acquisition is not reasonably probable, the possible terms of any transaction, the identification of the parties thereto or the nature of the business need not be disclosed, to the extent that in the opinion of the Board of Directors of the registrant public disclosure would jeopardize for such acquisition. Generally, an acquisition will be deemed reasonably probable when the Board of Directors has decided on the transaction or when an agreement in principle has been reached, even though the transaction is subject to stockholder approval. Where § 210.3–08 of Regulation S–X [17 CFR 210] would require financial statements of the business to be acquired to be included, the foregoing exception is not applicable and the description of the business to be acquired shall be more detailed.

7. The registrant may reserve the right to change the use of proceeds, provided that such reservation is due to certain contingencies that are discussed specifically and the alternatives to such use in that event are indicated.

Item 505. Determination of offering price.

(a) *Common equity.* Where common equity is being registered for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S–K or where there is a material disparity between the offering price of the common equity being registered and the market price of outstanding shares of the same class, describe the various factors considered in determining such offering price.

(b) *Warrants, rights and convertible securities.* Where warrants, rights or convertible securities exercisable for common equity for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S–K are being registered, describe the various factors considered in determining their exercise price.

Item 506. Dilution.

Where common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons of common equity acquired by them in transactions during the past five years, or which they have the right to acquire, and the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to filing of the registration statement, there shall be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where common equity securities are being registered and there is a material dilution of the purchasers' equity interest, the following shall be disclosed:

(a) The net tangible book value per share before and after the distribution;

(b) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and

(c) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 507. Selling security holders. If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering.

Item 508. Plan of distribution.

(a) *Underwriters and underwriting obligation.* If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the registrant and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction to Paragraph 508(a). All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of "best efforts" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "market-outs," need not be described except in the case of an agency or "best efforts" arrangement.

(b) *New underwriters.* Where securities are being registered of a registrant that has not previously been required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or where a prospectus is required to include reference on its cover page to material risks pursuant to Item 501 of Regulation S–K, and any one or more of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) has been organized, reactivated, or registered as a broker-dealer within the past three years, these facts concerning such underwriter(s) shall be disclosed in the prospectus together with, where applicable, the disclosures that the principal business function of such underwriter(s) will be to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such

underwriter(s). Sufficient details shall be given to allow full appreciation of such underwriter(s) experience and its relationship with the registrant, promoters and their controlling persons.

(c) *Other distrubutions.* Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to a dividend or interest reinvestment plan the terms of which provide for the purchase of some securities on the market, state whether the registrant or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers of dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) which will participate in the offering and state the amount to be offered through each.

(3) If any of the securities being registered are to be offered otherwise than for cash, state briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne. If the distribution is to be made pursuant to a plan of acquisition, reorganization, readjustment or succession, describe briefly the general effect of the plan and state when it became or is to become operative. As to any material amount of assets to be acquired under the plan, furnish information corresponding to that required by Instruction 5 of Item 504 of Regulation S–K.

(d) *Offerings on exchange.* If the securities are to be offered on an exchange, indicate the exchange. If the registered securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.

(3) *Underwriters' compensation.* To the extent not set forth on the cover page of the prospectus, describe the discounts and commissions to be allowed or paid to the underwriters, and all other items that would be deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rule of Fair Practice.

(f) *Underwriter's representative on board of directors.* Described any arrangement whereby the underwriter has the right to designate a member or members of the board of directors of the registrant. The registrant shall disclose the identity of any director so designated, and indicate whether or not a person so designated or allowed to be designated by the underwriter is or may be a director, officer, partner, employee or affiliate of the underwriter.

(g) *Indemnification of underwriters.* If the underwriting agreement provides for indemnification by the registrant of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(h) *Dealers' compensation.* State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other considerations to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

(i) *Finders and promoters.* Identify any finder or promoter and, if applicable, describe the nature of any material relationship between such finder or promoter and the registrant, its officers, directors, principal stockholders, finders or promoters or the principal underwriter(s), or if there is a managing underwriter(s), the managing underwriter(s), (including, in each case, affiliates or associates thereof).

Item 509. Interest of named experts and counsel. If (a) any expert named in the registration statement as having prepared or certified any part thereof (or is named as having prepared or certified a report or valuation for use in connection with the registration statement), or (b) counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion or at any time thereafter, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its parents or subsidiaries as a promoter, managing underwriter (or any principal underwriter, if there are no managing underwriters) voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions to Item 509. 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For the purpose of this Instruction, the term "expert" or counsel includes the firm, corporation, partnership or other entity, if any, by which such expert or counsel is employed or of which he is a member or of counsel to and all nonclerical personnel participating in such matter on behalf of such firm, corporation, partnership or entity.

2. Accountants, providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note § 210.2–01 of Regulation S–X (17 CFR 210) for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.

Item 510. Indemnification of directors and officers.

(a) *Description of indemnification provisions.* State the general effect of any statute, charter provisions, by-laws, contract or other arrangement under which any controlling person, director or officer of the registrant is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

(b) *Disclosure to Commission position on indemnification for Securities Act liabilities.* In addition to the disclosure required by paragraph (a) of this Item, if the undertaking required by paragraph (i) of Item 512 of Regulation S–K is not required to be included in the registration statement because acceleration of the effective date of the registation statement is not be be requested, and if waivers have not been obtained comparable to those specified in paragraph (i), 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) shall be included in the prospectus, 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

Item 511. Other expenses of issuance and distribution. Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holder.

Instruction to Item 511. Insofar as practicable, registration fees, Federal taxes, States taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be itemized separately. Include as a separate item any premium paid by the registrant or any selling security holder on any policy obtained in connection with the offering and sale of the securites being registered which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of such securites. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, identified as such, shall be given.

Item 512. Undertakings. Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 462A Offering.*[1] Include the following if the securities are registered pursuant to Rule 462A under the Securities Act [17 CFR 230.462A]:

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any propectus required by Section 10(a)(3) of the Securites Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, including (but not limited to) any addition or deletion of a managing underwriter other than as a co-manager;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S–3 [17 CFR 239.13] or Form S–8 [17 CFR 239.16b], and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exhange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the intitial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) *Filings incorporating subsequent Exchange Act domuments by reference.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of en employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the intital bona fide offering thereof.

(c) *Warrants and rights offerings.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

The undersigned issuer hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

(d) *Competitive bids.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered at competitive bidding:

The undersigned issuer hereby undertakes (1) to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made, and

(2) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of section 10(a) of the Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements thereto.

(e) *Incorporated annual and quarterly reports.* Include the following if the registration statement specifically incorporates by reference (other than by indirect incorporation by reference through a Form 10–K report) in the prospectus all or any part of the annual report to security holders meeting the requirements of rule 14a–3 or Rule 14c–3 under the Exchange Act:

The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a–3 or Rule 14c–3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S–X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest

[1] Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).

quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(f) *Employee plans on Form S–8.* Include the following if the registration statement is on a Form S–8:

(1) The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each employee to whom the prospectus is sent or given a copy of the issuer's annual report to stockholders for its last fiscal year, unless such employee otherwise has received a copy of such report, in which case the issuer shall state in the prospectus that it will promptly furnish, without charge, a copy of such report on written request of the employee. If the last fiscal year of the issuer has ended within 120 days prior to the use of the prospectus, the annual report of the issuer for the preceding fiscal year may be so delivered, but within such 120 day period the annual report for the last fiscal year will be furnished to each such employee.

(2) The undersigned issuer hereby undertakes to transmit or cause to be transmitted to all employees participating in the plan who do not otherwise receive such material as stockholders of the issuer, at the time and in the manner such material is sent to its stockholders, copies of all reports, proxy statements and other communications distributed to its stockholders generally.

(3) Where interests in a plan are registered herewith, the undersigned issuer and plan hereby undertake to transmit or cause to be transmitted promptly, without charge, to any participant in the plan who makes a written request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Securities Exchange Act of 1934 (Form 11–K). If such report is filed separately on Form 11–K, such form shall be delivered upon written request. If such report is filed as a part of the issuer's annual report on Form 10–K, that entire report (excluding exhibits) shall be delivered upon written request. If such report is filed as a part of the issuer's annual report to stockholders delivered pursuant to paragraph (1) or (2) of this undertaking, additional delivery shall not be required.

(g) *Equity offerings of nonreporting issuers.* Include the following if equity securities of a registrant that prior to the offering had no obligation to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act are being registered for sale in an underwritten offering:

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(h) *Registration on Form S–14 or S–15 of securities offered for resale.* Include the following if the securities are being registered on Form S–14 or S–15 in connection with a transaction specified in paragraph (a) of Rule 145 [17 CFR 230.145].

(1) The undersigned issuer hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(2) The issuer undertakes that every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 462A, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(i) *Acceleration of effectiveness.* Include the following if any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act [17 CFR 230.461], and (1) any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Securities Act, or (2) the underwriting agreement contains provision by which indemnification against such liabilities are given by the registrant to the underwriter or controlling persons of the underwriter and 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, and (3) the benefits of such indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

§ 229.600 Exhibits.

Item 601. Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 447 (17 CFR 230.447) under the Securities Act and Rule 12b–32 (17 CFR 240.12b–32) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits set forth in the exhibit table shall be filed as indicated, as part of the registration statement or report. (2) Each registration statement or report shall contain an exhibit index, which shall precede immediately the exhibis filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering systen where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located. For a description of each of the exhibits included in the exhibit table, see paragraph (b) of this Item. (3) This Item applies only to the forms specified in the exhibit table. With regard to forms not listed in that table, reference shall be made to the appropriate form for the specific exhibit filing requirements applicable thereto.

Instructions to Item 601. 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commission, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement, or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by this Instruction for not refiling such exhibit. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission. 2. In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document a copy of which is filed. the Commission may at any time in its discretion require filing of copies of any documents so omitted. 3. Only copies, rather than originals, need be filed of each exhibit required except as otherwise specifically noted.

Exhibit Table

Instructions to the Exhibit Table. 1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed. 2. The "X" designation indicates the documents which are required to be filed with each form even if previously filed with another document, *Provided, However,* that such previously filed documents may be incorprated by reference to satisfy the filing requirements. 3. The number used in the far left column of each table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

Exhibit Table

	Securities Act forms							Exchange Act forms			
	S-1	S-2	S-3	S-8	S-11	S-14	S-15	10	8-K	10-Q	10-K
(1) Underwriting agreement.	X	X	X		X						
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession.	X	X	X		X	X	X	X	X		
(3) Articles of incorporation and by-laws.	X				X	X		X			X
(4) Instruments defining the rights of security holders, including indentures.	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares.	X	X			X	X		X			
(7) Opinion re liquidation preference.	X	X			X	X		X			
(8) Opinion re tax matters.	X	X	X		X	X	X				
(9) Voting trust agreement.	X				X	X		X			
(10) Material contracts	X	X			X	X	X	X			X
(11) Statement re computation of per share earnings.	X	X			X	X		X		X	X
(12) Statements re computation of ratios[1].	X	X			X	X	X	X			X
(13) Annual report to[2] security holders, Form 10-Q or quarterly report to security holders.		X					X				X
(14) Material foreign patents.	X					X		X			
(15) Letter re unaudited financial information.	X	X	X	X	X	X	X				
(16) Letter re change in certifying accountant.									X		
(17) Letter re director resignation.									X		
(18) Letter re change in accounting principles.										X	X
(19) Previously unfiled documents.										X	X
(20) Report furnished to security holders.										X	
(21) Other documents or statements to security holders.									X		
(22) Subsidiaries of the registrant.	X				X			X			X
(23) Published report regarding matters submitted to vote of security holders.										X	X
(24) Consents of experts and counsel.	X	X	X	X	X	X	X				

Exhibit Table—Continued

	Securities Act forms							Exchange Act forms			
	S-1	S-2	S-3	S-8	S-11	S-14	S-15	10	8-K	10-Q	10-K
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee.	X	X	X		X	X					
(27) Invitations for competitive bids.	X	X	X								
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X

[1] Such statements are necessary only when such ratios are furnished.
[2] Where incorporated by reference into the text of the prospectus as permitted by the registration form.

(b) *Description of exhibits.* Set forth below is a description of each document listed in the exhibit tables.

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Plan of acquisition, reorganization, arrangement, liquidation or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3) *Articles of incorporation and by-laws*—The articles of incorporation and by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the registrant are filed, there shall also be filed a complete copy of the articles or by-laws as amended. Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority; and in such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(4) *Instruments defining the rights of security holders, including indentures*—(i) All instruments defining the rights of holders of the equity or debt securities being registered.

(ii) Except as set forth in (iii) below, for filings on Forms S–1, S–11, and S–14 under the Securities Act and Forms 10 and 10–K under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(iii) Where the instrument defines the rights of holders of long-term debt of the registrant and all its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (A) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (B) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (C) copies of instruments evidencing scrip certificates for fractions of shares.

(iv) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (A) a reasonably itemized and informative table of contents; and (B) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(v) With respect to Forms 8–K and 10–Q under the Exchange Act which are filed and which disclose the creation of a new class of securities or indebtedness or the issuances or reissuance of any additional securities or indebtedness of a class outstanding, or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness. However, there need not be filed any instrument with respect to long-term debt not being registered which meets the exclusion set forth above in paragraph (iii)(A).

(5) *Opinion re legality*—(i) An opinion of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be, legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(ii) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA furnish:

(A) An opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions;

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code; or

(C) An opinion of counsel, attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirement of the Act pertaining to such provisions.

(6) *Opinion re discount on capital shares*—If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

(7) *Opinion re liquidation preference*—If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security

holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(8) *Opinion re tax matters*—For filings on Form S–11 under the Securities Act or those to which Guide 4 of the Industry Guides applies, an opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(10) *Material contracts*—(i) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it shall be filed except where immaterial in amount or signficance:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

(iii)(A) Any management contract or any remunerative plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the five most highly compensated executive officers of the registrant participates shall be deemed material and shall be filed; and any other management contract or any remunerative plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

(B) Notwithstanding paragraph (iii)(A) above, the following management contracts or remunerative plans, contracts or arrangements need not be filed:

(*1*) Ordinary purchase and sales agency agreements.

(*2*) Agreements with managers of stores in a chain organization or similar organization.

(*3*) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(*4*) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(*5*) Any remunerative plan, contract or arrangement if the registrant is a foreign private issuer that furnishes remunerative information on an aggregate basis as permitted by Instruction 1 to paragraph (a) of Item 402.

(*6*) Any remunerative plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company who has a class of securities registered pursuant to § 12 or files reports pursuant to § 15(d) of the Exchange Act and is filing a report on Form 10–K or registering debt instruments on Form S–2.

Instruction: With the exception of management contracts, in order to comply with paragraph (iii) above, registrants need only file copies of the various remunerative plans and need not file each individual director's or executive officer's personal agreement under the plans unless there are particular provisions in such personal agreements whose disclosure in an exhibit is necessary to an investor's understanding of that individual's remuneration under the plan.

(11) *Statement re computation of per share earnings*—A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. (See Securities Act Release No. 5133 (February 18, 1971) [36 FR 4483]).

(12) *Statements re computation of ratios*—A statement setting forth in reasonable detail the computation of ratios of earnings to combined fixed charges and preferred dividends and any other such ratios which appear in the registration statement or report.

(13) *Annual report to security holders, Form 10–Q or quarterly report to security holders*—The registrant's annual report to security holders for its last fiscal year, its Form 10–Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) [17 CFR 230.411(b)].

(14) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights,

furnish a list showing the number and a brief identification of each such patent or patent right.

(15) *Letter re unaudited interim financial information*—A letter, where applicable, from the independent accountant which acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information which pursuant to Rule 436(c) (17 CFR 230.436(c)) under the Securities Act is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act.

(16) *Letter re change in certifying accountant*—A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(17) *Letter re director resignation*—Any letter from a former director which sets forth a description of a disagreement with the registrant that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(18) *Letter re change in accounting principles*—Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Previously unfiled documents*—All contracts and other documents of a type required to be filed as an exhibit to an original registration statement on Form 10 or a report on Form 10–K or 10–Q under the Exchange Act which were executed or in effect during the reporting period and not previously filed, as well as all amendments or modifications, not previously filed, to all currently required exhibits previously filed with Forms 10, 10–K and 10–Q.

(20) *Report furnished to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10–Q, the information called for may be incorporated by reference to such published document or statement provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10–Q report.

(21) *Other documents or statements to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of this form the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to the report on this form.

(22) *Subsidiaries of the registrant*—(i) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list shall be repeated in each annual filing.

(ii) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in Rule 1–02(v) (17 CFR 210.1–02(v)) of Regulation S–X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

(23) *Published report regarding matters submitted to vote of security holders*—Published reports containing all of the information called for by Item 4 of Part II of Form 10–Q or Item 11 of Part III on Form 10–K which is referred to therein in lieu of providing disclosure in Form 10–Q or 10–K, which are required to be filed as exhibits by Rule 12(b)(23(a)(3) under the Exchange Act.

(24) *Consents of experts and counsel*—All written consents required to be filed, together with a list thereof. Such consents shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion, a reference shall be made in the list to the report or opinion containing the consent.

(25) *Power of attorney*—If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. In addition, if the name of any officer signing on behalf of the registrant, or attesting the registrant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(26) *Statement of eligibility of trustee*—A statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939.

(27) *Invitations for competitive bids*—If the registration statement covers securities to be offered at competitive bidding, any form of communication which is an invitation for competitive bid which will be sent or given to any person shall be filed.

(28) *Additional exhibits*—(i) Any additional exhibits which the registrant may wish to file shall be so marked as to indicate clearly the subject matters to which they refer. (ii) Any document (except for an exhibit) or part thereof which is incorporated by reference in the filing and is not otherwise required to be filed by this Item or is not a Commission filed document incorporated by reference in a Securities Act registration statement.

§ 229.700 Miscellaneous.

Item 701. Recent sales of unregistered securities. Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) *Securities sold.* Give the date of sale and the title and amount of securities sold.

(b) *Underwriters and other purchasers.* Give the names of the principal underwriters, if any. As to any such securities not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) *Consideration.* As to securities sold for cash, state the aggregate

offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) *Exemption from registration claimed.* Indicate the section of the Securities Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information required by this Item 701 need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

§ 229.800 List of Industry Guides

(a) Guide 1. Disclosure of principal sources of electric revenues.

(b) Guide 2. Prospectuses relating to interests in oil and gas programs guide.

(c) Guide 3. Registration statements relating to "insurance premium funding programs."

(d) Guide 4. Preparation of registration statements relating to interest in real estate limited partnerships.

(e) Guide 5. Statistical disclosure by bank holding companies.

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

[FR Doc. 81-23430 Filed 8-13-81; 12:56 pm]

BILLING CODE 8010-01-M

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17 CFR Parts 201, 230 and 240

[Release Nos. 33-6333, 34-18009, and IC-11889; File No. S7-895]

Proposed Revision of Regulation C, Registration and Regulation 12B, Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposed revisions to the regulations which govern the procedures concerning: (1) the registration of securities under the Securities Act of 1933; and (2) the registration and reports of certain issuers under the Securities Exchange Act of 1934. Certain of these proposals are designed to implement the Commission's program to integrate the disclosure systems under those Acts. Other proposals represent a "sunset" review of these regulations and are intended to simplify, to update and to eliminate inconsistencies in current rules and to delete unnecessary or outmoded regulation.

DATE: Comments must be received on or before October 30, 1981.

ADDRESSES: Comment letter should refer to File No. S7-895 and be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: W. Scott Cooper (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549; for questions concerning investment companies, contact Mary K. Crook (202) 272-2033, Office of Disclosure Legal Services, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment proposed amendments to Regulation C (17 CFR 230.400 through 230.494) pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. III 1979), as amended by the Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477 (October 21, 1980)] and proposed amendments to Regulation 12B (17 CFR 240.12b-1 through 240.12b-36) pursuant to Sections 3(b), 13(a) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. III 1979)]. If adopted, these proposals would simplify and clarify procedural requirements, eliminate inconsistencies between different sets of regulations, conform the provisions of Regulation C and Regulation 12B to the procedures established in the integrated disclosure system, and revise and update, or delete, out-moded or unnecessary regulations.

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 amendments to Regulation C and 12B proposed herein will not have, if promulgated, a significent economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

In addition, the Commission today has proposed or reproposed for comment in separate releases several other rulemaking proposals. These proposals include: (1) three registration statement forms, Forms S-1, S-2 and S-3 (originally denominated for comment purposes as Forms A, B and C) which will constitute the basic framework for registering securities under the Securities Act [1] (2) the expansion of Regulation S-K (17 CFR 229.001 et seq.) to include additional disclosure items and the rescission of Guides for the Preparation and Filing of Registration Statements and Reports (hereinafter the "Guides"), other than the Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides; [2] (3) a new rule governing registration of securities to be sold in a continuous or delayed offering; [3] (4) new rules relating to the responsibility of persons subject to Section 11 of the Securities Act in an integrated disclosure system; [4] (5) a statement of the Commission's policy with respect to the disclosure of security ratings; [5] and (6) amendments to other Securities Act registration forms [6] (7) and amendments to certain Exchange Act forms and schedules [7] to incorporate the new Regulation S-K provisions and make other changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as the continuation of the Commission's "sunset" review of all existing rules and regulations.

I. Background and Overview

The rules comprising Regulation C and Regulation 12B were adopted to standardize securities registration and reporting under the Securities Act and Exchange Act, respectively, to implement the statutes and to provide more specific instructions for registrants than are contained in the statutes themselves. Although these regulations

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[1] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693] (the "ABC Release").

[2] Securities Act Release No. 6332 (August 6, 1981) (the "Regulation S-K Release") as originally proposed in Securities Act Release No. 6276 (December 23, 1980) (46 FR 78) (the "Guides Release").

[3] Securities Act Release No. 6334 (August 6, 1981). Originally proposed as part of Securities Act Release No. 6276 (December 23, 1980) (46 FR 78).

[4] Securities Act Release No. 6335 (August 6, 1981).

[5] Securities Act Release No. 6336 (August 6, 1981).

[6] Securities Act Release No. 6337 (August 6, 1981).

[7] Securities Exchange Release No. 18014 (August 6, 1981).

developed over a long period, no overall review of their provisions has been undertaken for some time.[8] In view of its program to integrate the disclosure systems under the Federal securities laws and its ongoing "sunset" review of regulations, the Commission believes that a comprehensive review of Regulation C and Regulation 12B is both appropriate and necessary at this time.

In its development of an integrated disclosure system, the Commission has sought to consolidate requirements relating to substantive disclosure and document content in Regulation S-K. The proposals in this release reflect continuation of that process and also the effort to simplify and consolidate procedural requirements in Regulations C and 12B.

The comprehensive review commenced with this release will establish regulations which reflect the procedures instituted by the integrated disclosure program. For example, the rules concerning incorporation by reference are proposed to be revised and made uniform to comport with the extended use of incorporation by reference of Exchange Act reports in Securities Act registration statements. The proposed revision and expansion of Regulation S-K involves not only the inclusion of the disclosure provisions of the Guides in that regulation[9] but also the inclusion of the disclosure provisions which this release proposes to be deleted from Regulations C and 12B.[10] Similarly, the procedural provisions of the Guides are proposed to be included in Regulation C.

One result of these changes would be that provisions in Regulation C to be moved to Regulation S-K would no longer be applicable automatically, but would apply only when the relevant items of Regulation S-K are adopted in a particular registration form. The release proposing coordinating changes in Securities Act forms [11] modifies most of the current registration forms to adopt relevant sections of Regulation S-K. However, certain special forms are not being amended to adopt items of Regulation S-K. Form S-18 (17 CFR 239.28) for certain offerings of limited size does not refer to Regulation S-K, but the Commission expects to propose amendments to this form in the near future to adopt appropriate provisions of Regulation C being moved to Regulation S-K. Form S-12 (17 CFR 239.19) for the registration of American Depositary Receipts issued against outstanding foreign securities and Form C-3 (17 CFR 239.5) for the registration of American certificates against foreign issues and for underlying securities also do not refer to Regulation S-K. The addition of any appropriate provisions formerly in Regulation C or the Guides and now moved to Regulation S-K will be addressed in connection with the amendments currently under consideration to substantially revise, consolidate and streamline foreign issuer disclosure requirements. Forms N-1, N-2 and S-6 (17 CFR 239.11, 239.11a-1, 239.16) pertaining to registration statement of investment companies, registered under the Investment Company Act of 1940 (the "Investment Company Act") [15 U.S.C. 80a-1 et seq. (1976 and Supp. III 1979), as amended by the Small Business Investment Incentive Act of 1980, Pub. L. No. 96-477 (October 21, 1980)], do not adopt items of Regulation S-K. To preserve the application of certain provisions of Regulation C, which are being moved to Regulation S-K, to registration statements on these forms, the Commission is proposing several new, special rules in Regulation C applicable solely to these forms. These new special rules are denominated "y" rules. As these forms are reviewed in the future, such provisions may be incorporated in substantive disclosure provisions and eliminated from Regulation C.

In addition to implementing integration, these proposals represent a "sunset" review of these regualtions which is designed to eliminate inconsistencies between rules, to delete unnecessary, out-moded or duplicative rules and to update and revise the remaining provisions. This sunset review has resulted in the proposed deletion of 17 rules. Certain rules are not proposed to be revised,[12] and are not discussed in this release. However, the Commission requests specific comment on these other provisions of Regulations C and 12B in addition to the proposals set forth below, in order to determine whether further revisions are appropriate or whether such rules are out-moded, unnecessary or impose undue burdens on registrants in relation to their benefits.

Other changes proposed as parts of the Commission's integration program would be reflected in Regulation C, but are the subjects of separate releases. Proposed Rules 412 and 418 are discussed in the release relating to the responsibility of persons subject to Section 11 of the Securities Act. Proposed Rule 462A, governing registration of securities to be sold in a continuous or delayed offering, is the subject of a separate release. Proposed Rule 436(g) is discussed in the release setting forth a statement of the Commission's policy with respect to the disclosure of security ratings.

In order to facilitate commentators' understanding of the proposals, the discussion of the proposed revisions to Regulation C and the proposed corresponding revisions to Regulation 12B are presented in the same manner that the rules in Regulation C are organized, that is: (1) general requirements; (2) form and content of a prospectus; (3) written consents; (4) exhibits; (5) filing fees and effective dates; (6) amendments and withdrawals; and (7) nondisclosure of contract provisions. The numbering of the rules in Regulation C and the current organization of the regulation have not been changed. If adopted, the proposed rules will be renumbered. The Commission requests specific comment on whether further structural

[8] Several of the provisions in Regulation C were adopted by the Commission as part of a compilation of general rules and regulations on April 30, 1937. (2 FR 904). On June 9, 1947, the Commission centralized certain of the general rules and regulations under the heading of Regulation C to facilitate the registration of securities under that Act by eliminating obsolete provisions and by reorganizing and revising the remaining rules (Securities Act Release No. 3325, 12 FR 4071). Since 1947, Regulation C has been revised, for the most part, on a rule-by-rule basis, except for changes in the rules which were adopted to implement statutory changes. (*See, e.g.*, Securities Act Release No. 3519, October 8, 1954 (19 FR 6727)). The rules comprising Regulation 12B have developed in a similar manner. On December 27, 1948, the Commission announced the adoption of Regulation 12B which was promulgated to clarify and update the Commission's rules and regulations under the Exchange Act governing registration and reporting. (Securities Exchange Act Release No. 4194, 13 FR 9321). On February 5, 1965, the Commission announced the revision of certain of the rules in Regulation 12B to conform to the addition of Section 12(g) to the Exchange Act. (Securities Exchange Act Release No. 7525, 30 FR 2022).

[9] In an advance notice of proposed rulemaking, Securities Act Release No. 6185 (December 5, 1979) (44 FR 72604) (hereinafter the "Concept Release") the Commission requested comment on all aspects of the Guides. Comments in response to the Concept Release recommended that specific provisions of the Guides be rescinded and adopted as part of Regulation C or Regulation S-K. Therefore, the Commission in the Guides Release proposed certain additions to Regulation S-K and Regulation C to embody provisions of the Guides which were to be rescinded.

[10] For example, these provisions relate to legends in a registration statement and prospectus and exhibits. For an expanded discussion of these proposals, *see* the Regulation S-K Release.

[11] *See Securities Act Release No. 6337.*

[12] The rules in Regulation C in which no change is presently proposed are: 408; 409; 410; 416; 417; 420; 423; 424; 429; 434; 434b; 437; 438; 455; 456; 459; 463; 474; 475; 476; 479; 490; 491; 492; 493; and 494. The rules in Regulation 12B in which no change is presently proposed are: 12b-3; 12b-5; 12b-6; 12b-7; 12b-10; 12b-13; 12b-14; 12b-15; 12b-20; 12b-21; 12b-22; 12b-25; 12b-30; 12b-31; 12b-32; 12b-33; and 12b-36.

reorganization should also be made and, if so, what form it should take. For instance, commentators are invited to comment on whether it would be appropriate to consolidate all of the provisions in Regulation C governing registration statements for securities to be offered at competitive bid or to consolidate all of the provisions applicable only to those registration statements of investment companies.

II. Table of Proposed Regulation C

The principal focus of this release is on the numerous rules in Regulation C. To facilitate review of that regulation and the proposals herein, and comments on Regulation C, the following table sets forth the entire contents of Regulation C. It includes all of the current rules in Regulation C as well as the rules proposed by this and the companion releases. The rules which are not the subject of specific proposed change are so indicated. In addition, the chart indicates the source of the proposed rule, whether it is an existing rule or rules in Regulation C, a Guide or Guides, a current provision of a registration form or forms, or a combination thereof.

Regulation C—*Registration*

Rule	Proposed action				Commentary
	Deleted	No change	Amendment	New	
230.400 Application of §§ 230.400 to 230.494, inclusive.			X		
General Requirements					
230.401 Requirement as to proper form.			X		Based on Current Rules 401, 427(b), 432 & 470 and Guide 3.
230.402 Number of copies; binding; signatures.			X		
230.403 Requirements as to paper, printing and language.			X		
230.404 Preparation of registration statement.			X		Changes from general instructions to registration forms; last sentence in paragraph (e) moved to Rule 433.
230.405 Definitions of terms			X	X	Changes from Exchange Act rules.
230.406 Title of securities	X				Moved to Regulation S-K and Rule 406y.
230.406y Title of securities				X	Rule 406.
230.407 Interpretation of requirements.	X				
230.408 Additional information.		X			
230.409 Information unknown or not reasonably available.		X			
230.410 Disclaimer of control		X			
230.411 Incorporation by reference.			X		Changes from Rules 412 & 422 and Exchange Act Rule 12b-23.
230.412 Form of and limitation upon incorporation by reference.	X				
230.412 Effective date of documents incorporated by reference.				X	From Item 8 of proposed Form A & Item 9 of proposed Form B.
230.413 Registration of additional securities.			X		
230.414 Registration by certain successor issuers.			X		
230.415 Competitive bidding registration statements.			X		Undertaking moved to Regulation S-K.
230.416 Securities to be issued as a result of stock splits, stock dividends, and antidilution provisions.		X			
230.417 Date of financial statements.		X			
230.418 Modified or superseded documents.				X	From Item 8 of proposed Form A & Item 9 of proposed Form B.
230.419 Supplemental information.				X	From proposed Rule 400b, proposed Rule 424a, Guide 53, Instruction to Item 1(c)(1)(ii) of Regulation S-K, Instruction 4(i) to Item 2(a) of Regulation S-K, proposed Rule 460(g).
Form and Content of Prospectuses					
230.420 Legibility of prospectuses.		X			
230.421 Presentation of information in prospectuses.			X		Changes from general instructions to registration forms; part moved to Regulation S-K and Rule 445y.
230.422 Summaries or outlines of documents.	X				
230.423 Date of prospectuses.		X			
230.424 Filing of prospectuses; number of copies.		X			

Regulation C—*Registration*—Continued

Rule	Proposed action				Commentary
	Deleted	No change	Amendment	New	
230.425 Statement required in all prospectuses.	X				Moved to Regulation S-K and Rule 425y.
230.425a Statement required on prospectus regarding delivery of prospectuses by dealers.	X				Moved to Regulation S-K and Rule 425y.
230.425y Information required by a prospectus.				X	From Rules 421(c), 425, 425a, 426, 433(b).
230.426 Statement as to stabilizing.	X				Moved to Regulation S-K and Rule 425y.
230.427 Contents of prospectus used after nine months.			X		Delete paragraph (b), move to Rule 401.
230.428 Invitations for competitive bids.			X		Move undertaking to Regulation S-K, delete last sentence only.
230.429 Prospectus relating to several registration statements.		X			
230.430 Prospectus for employees' savings, profit sharing or pension plans.	X				
230.431 Prospectuses supplementing preliminary material supplied previously.	X				
230.432 Application of amendments to rules governing contents of prospectuses.	X				Moved to Rule 401.
230.433 Prospectus for use prior to effective date.			X		Prospectus statement in paragraph (b) moved to Regulation S-K and Rule 445y; addition from Rule 404(e).
230.434 Summary prospectus prepared by independent organizations.	X				
230.434a Summary prospectuses.			X		Eligibility criteria of proposed Form S-2 substituted; modification of provision in tabular presentation.
230.434b Additional information required to be included in prospectuses relating to tender offers.		X			
230.434c Use of a foreign language prospectus in a foreign country.			X		Revision to refer to all foreign countries rather than just Japan; consider deletion.
230.434d Advertisement by an investment company as satisfying requirements of section 10.			X		Addition of business development companies.
Written Consents					
230.435 Formal requirements as to consents.	X				Moved to Regulation S-K and Rule 445y.
230.436 Consents required in special cases.			X		Guide 38 & security rating proposal.
230.437 Application to dispense with consent.		X			
230.438 Consents of persons about to become directors.		X			
230.439 Consent to use of material incorporated by reference.			X		From instruction on incorporation by reference in Forms S-8 & S-16.
Exhibits					
230.445 Additional exhibits.	X				Moved to Regulation S-K & Rule 445y.
230.445y Exhibits for certain registration statements.				X	Rule 402(c), 403(e), 428, 445, 448, 472(d).
230.446 Omission of substantially identical documents.	X				Moved to Regulation S-K & Rule 445y.
230.447 Incorporation of exhibits by reference.			X		Delete paragraph (c).
Filing; Fees; Effective Date					
230.455 Place of filing		X			
230.456 Date of filing		X			
230.457 Computation of fee			X		Modification for exchange offers, mergers, consolidations and guarantees.
230.459 Calculation of effective date.		X			
230.460 Distribution of preliminary prospectus.			X		Guide 19.
230.461 Acceleration of effective date.			X		Rule 460 & Guides 17, 46 & 53.
230.461y Undertaking required in certain registration statements.				X	Rule 461 & Guide 46.

Regulation C—*Registration*—Continued

Rule	Proposed action				Commentary
	Deleted	No change	Amendment	New	
230.462 Notice of delayed or suspended offering and sale of securities.	X				
230.462a Delayed or continuous offering and sale of securities.			X		
230.463 Report of sales of securities and use of proceeds therefrom.		X			
230.464 Effective date of posteffective amendments on Form S-8 or on Form S-3 for registration statements relating to a dividend or interest reinvestment plan.			X		Add dividend or interest reinvestment plans on Form S-3.
230.465 Effective date of post-effective amendments filed by certain registered investment companies.			X		
Amendments; Withdrawals					
230.470 Formal requirements for amendments.			X		Part moved to Rule 401.
230.471 Signatures to amendments.			X		
230.472 Filing of amendments, number of copies.			X		
230.473 Delaying amendments.			X		Same as § 230.464.
230.474 Date of filing of amendments.		X			
230.475 Amendment filed with consent of Commission.		X			
230.475a Pre-effective amendments on Form S-8 and certain preeffective amendments on Form S-3, deemed filed with consent of Commission.			X		Same as § 230.464.
230.476 Amendment filed pursuant to order of Commission.		X			
230.477 Withdrawal of registration statement or amendment.			X		Same as § 230.464.
230.478 Powers to amend or withdraw registration statement.		X			
230.479 Procedure with respect to abandoned registration statements and post-effective amendments.		X			
Nondisclosure of Contract Provisions					
230.485 Contracts in general			X		From Guide 50 & Exchange Act Rule 24b-2.
Registration by Foreign Governments or Political Subdivisions Thereof					
230.490 Information to be furnished under paragraph (3) of Schedule B.		X			
230.491 Information to be furnished under paragraph (6) of Schedule B.		X			
230.492 Omissions from prospectuses.		X			
230.493 Filing of opinions of counsel.		X			
230.494 Newspaper prospectuses.		X			

III. Synopsis

A. General Requirements

1. *Application of Forms and Rules.* a. *Present Provisions.* Currently, four rules in Regulation C and Guide 3 pertain to the applicability of rules and forms to registration statements, prospectuses and amendments thereto. Rule 401 (17 CFR 230.401) provides that a registration statement shall be prepared in accordance with the form prescribed therefor as in effect on the date of filing. The first paragraph of Guide 3 states that the filing date referred to in Rule 401 is the initial filing date and that, in the absence of specific provisions to the contrary in subsequent amendments to forms and rules, those subsequent amendments do not apply, even if the registration statement is amended.

Rule 432 (17 CFR 230.432) provides that the form and contents of a prospectus need conform only to the applicable rules in effect and contain the information as of the effective date of the registration statement, unless a subsequent amendment to a rule provides otherwise or unless the registration statement is subject to a stop order under Section 8(d) of the Securities Act. After a stop order is lifted, the prospectus must conform to the rules in effect on the date the stop order is lifted. The second paragraph of Guide 3 indicates that the term "rules" in Rule 432 includes "forms."

The other two rules relate to amendments to registration statements. Rule 427(b) (17 CFR 230.427(b)) permits a prospectus filed as an amendment to an effective registration statement on one form to be prepared in accordance with another form which would then be appropriate for the registration of securities, so long as all the requirements of the other form (including required undertakings) are met. With two exceptions, Rule 470 (17 CFR 230.470) requires an amendment to a registration statement to conform to the rules applicable to the original registration statement. A post-effective amendment which is filed for the purpose of complying with Section 10(a)(3) of the Securities Act (hereinafter a "Section 10(a)(3) amendment") or an amendment filed pursuant to Section 24(e)(1) of the Investment Company Act is required to conform to the appropriate form for registration as in effect at the time of filing of the amendment, rather than at the time of the original registration statement.

b. *Comments.* Certain commentators responding to the Concept Release stated that Guide 3 should be incorporated into Rules 401 and 432. They also noted a possible conflict between those rules in that Rule 401 refers to the rules in effect on the initial filing date to determine the proper form of registration statement while Rule 432 refers to the rules in effect on the effective date to determine the form and content of the prospectus.

The Guides Release proposed to incorporate Guide 3 into Rules 401 and 432 and requested specific comment on possible changes to clarify the interrelationship of those rules and Rule 470. The response by commentators to the Guides Release reaffirmed the need for clarification. The majority of commentators expressing views on the issue believed that the prospectus should only be required to conform to

the rules in effect on the initial filing date of the registration statement.

c. *Proposed Rule 401.* In view of the need for clarification and the number of rules pertaining to the application of rules and forms, the Commission is proposing to amend Rule 401 to reconcile apparent inconsistencies and to combine Rules 401, 427(b), 432 and the applicable provisions of Rule 470 into one rule.[13] If the proposal is adopted, Rules 427(b), 432 and a portion of Rule 470 would be eliminated.

As proposed, Rule 401 would contain seven paragraphs. Proposed Rule 401(a) pertains to the registration statement and the prospectus and sets the initial filing date of the registration statement and prospectus as the uniform standard for determining what rules and forms apply. In the Commission's view, the initial filing date will provide certainty to registrants and avoid the possible delay to a registrant which has filed a registration statement that has not become effective prior to the effective date of new rules.

Paragraphs (b) and (c) of the proposal pertain to amendments to registration statements and prospectuses. Proposed Rule 401(b) is limited to Section 10(a)(3) amendments and to those pursuant to Section 24(e) or Section 24(f) of the Investment Company Act.[14] Like Rule 470, this this proposal would require that the form and content of such amendments conform to the rules and forms in effect on the date of filing of the amendment. In addition, a registrant would have to satisfy the eligibility requirements for the use of the form at the date of filing such an amendment. Other amendments to registration statements and prospectuses would be subject to proposed Rule 401(c) under which the amendment would conform to the rules and forms in effect on the filing date of the latest amendment described in proposed Rule 401(b) or, if no such amendment has been filed, on the initial date of filing of the registration statement and prospectus. To illustrate the operation of these proposals to a registrant which is not an investment company, the rules and forms in effect on the initial filing date of the registration statement would pertain to any pre-effective amendment and any post-effective amendment prior to the first Section 10(a)(3) amendment. The rules and forms in effect on the filing date of the first Section 10(a)(3) amendment would govern both the Section 10(a)(3) amendment and subsequent amendments filed prior to the next Section 10(a)(3) amendment.

Proposed Rules 401(d) and (e) are substantially similar to the exception in Rule 432 and the first sentence of Rule 427(b), respectively. A prospectus which is part of a registration statement that has been subject to a stop order would be required under proposed Rule 401(d) to conform to the rules and forms in effect on the date the stop order is lifted. A prospectus filed as part of an amendment to an effective registration statement would be permitted under proposed Rule 401(e) to conform to any other form then available if all the requirements of the other form, including required undertakings, are met.

Proposed Rule 401(f) would provide that a new or amended rule or form could, by specific provision, vary the general standards of proposed Rule 401. In addition, it would allow a registrant to comply on a voluntary basis with the rules and forms in effect on dates subsequent to those specified in proposed Rule 401(a), (b), (c) and (d) provided the registrant complies with all the requirements of such other rules and forms. This provision of the proposal is designed to clarify the registrant's ability to comply voluntarily with new or amended regulations even though not required to do so.

Finally, proposed Rule 401(g) is based in part on Rules 401 and 427(b). Like those rules, the proposal would deem a registration statement or an amendment to be filed on the proper form unless the Commission makes an objection prior to the effective date. However, the proposal adds a further statement that no presumption of proper form may be made if the Commission specifically notifies the registrant to that effect. The proposed alternative is necessitated by the operation of current staff review procedures, under which some registration statements are not reviewed. Where the content of the registration statement is not reviewed, the staff also may not review the eligibility of the registrant to use the form. In such circumstances, the Commission believes that it may be appropriate to inform the registrant that, since no review of the eligibility to use a particular form is being made, no presumption as to the use of the proper form may arise. However, in all instances where the Commission says nothing about use of a particular form, the presumption in the rule that the form is available will continue to apply.

2. *Definitions.* Since the disclosure items in Regulation S-K are used in forms and reports filed under both the Securities Act and the Exchange Act, and since the information disclosed in a document filed under one of the statutes may be incorporated by reference into a document filed under the other statute, it is essential that definitions which govern the terms used in both statutes be consistent to the extent possible. Accordingly, the Commission examined the definitions in Rule 405 (17 CFR 230.405) under Regulation C and in Rule 12b-2 (17 CFR 240.12b-2) under Regulation 12B with this purpose and to determine whether any definitions have become out-moded and whether any new definitions are necessary.

For the most part, the definitions in Rule 405 of Regulation C are identical to the definitions of the same terms found in either the Exchange Act, Rule 12b-2 of Regulation 12B, or other rules under the Exchange Act. Certain non-substantive revisions are proposed to the definitions of the terms "control" and "totally held subsidiary" in Regulation 12B to make those definitions conform to those in Regulation C.

The definitions of the terms "equity security" and "officer" are present in Rule 405, but are not part of Rule 12b-2. The definition of the term "equity security" under the Exchange Act found in Rule 3a11-1 (17 CFR 240.3a11-1) is more detailed and descriptive than the definition of the term "equity security" found in Rule 405 or in Section 3(a)(11) of the Exchange Act. The expanded definition of the term "equity security" was adopted to make clear that the term covers a broad range of equity interests, in addition to the securities specifically included in Section 3(a)(11) of the Exchange Act,[15] and that the term "equity security" includes call and put options.[16] Since there appears to be no

[13] With respect to the application of rules and forms to filings, two other proposed changes should be noted. First, the sentence in Rule 400 (17 CFR 230.400) referring to the meaning of the term "registration statement" is proposed to be deleted. It provides that, for purposes of Regulation C (except Rule 427), the term "registration statement" includes amendments filed under Section 24(e)(1) of the Investment Company Act. This statement implies that such amendments are treated as registration statements for all purposes, but this is not the case in several instances including, for example, number of copies. *Compare* Rule 402 (17 CFR 230.402) regarding registration statements *with* Rule 472 (17 CFR 230.472) regarding amendments. The proposed deletion is not intended to make a substantive change in the manner in which such amendments are treated under Regulation C. Second, Rule 12b-1 (17 CFR 240.12b-1) would be amended to make clear that Section 12(g) companies as well as Section 12(b) companies are subject to Regulation 12B.

[14] Section 24(f) is proposed to be added to make clear that amendments filed pursuant to that section are covered.

[15] Securities Exchange Act Release No. 7581 (April 23, 1965) (30 FR 6114).

[16] This action was taken to make it clear that the Board of Governors of the Federal Reserve System has the authority under Section 7(d) of the Exchange Act to regulate the extension or maintenance of credit by banks with respect to such options. *See*

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basis for distinguishing the definition of the term "equity security" with respect to its use under the Securities Act and the Exchange Act, the definition of the term "equity security" in Rule 405 is proposed to be revised to conform to the definition in Rule 3a11–1. The definition of the term "officer" found in Rule 3b–2 (17 CFR 240.3b–2) of the Exchange Act differs slightly, but not substantively, from the definition of that term in Rule 405 and will be conformed to the definiton in Rule 405.

There are four definitions under the Exchange Act which are not defined in the Securities Act, or the rules thereunder, including Rule 405. Since these terms generally are used in the registration forms and Regulation S–K, it is appropriate to add these provisions to Rule 405 under Regulation C. The definition of the term "wholly owned subsidiary" in Rule 12b–2 and of the terms "foreign government," "foreign issuer" and "foreign private issuer" in Rule 3b–4 (17 CFR 240.3b–4) under the Exchange Act are proposed as part of Rule 405.

Related to the definitions in Rule 3b–4 is the term "North American issuer." While this term is generally interpreted to mean a foreign private issuer incorporated or organized in Canada or Mexico,[17] this interpretation has not been set forth in any rule or form. The Commission believes it is appropriate to define this term in Rule 405 and Rule 12b–2, and such a definition is proposed.

In connection with the proposed rule governing the registration of securities to be sold in a delayed or continuous offering, two definitions are proposed to be included in Rule 405 under Regulation C. The term "employee benefit plan," as proposed, would mean any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or pension plan solely for employees, directors, trustees or officers. This definition is similar to the definition of "employee benefit plan" currently set forth in General Instruction B of form S–8 (17 CFR 239.16b).[18] The term "dividend or interest reinvestment plan," as proposed, would mean a plan which is offered solely to the existing security holders of the registrant, which allows such persons to reinvest dividends or interest paid to them on securities issued by the registrant, and also may allow additional cash amounts to be contributed by the participants in the plan, provided the securities to be registered are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase. This definition is similar to the current definition of dividend or interest reinvestment plans in General Instruction A(4) of Form S–16 (17 CFR 239.27).[19] This term will be used in other rules in Regulation C, which will provide for the automatic effectiveness of registration statements and amendments thereto on proposed Form S–3 relating to dividend or interest reinvestment plans.[20]

The definition of the term "executive officer" is proposed to be added to Rule 405 and rule 12b–2 to centralize and make uniform the definition which is found in several Exchange Act and Securities Act rules and regulations.[21] The various definitions of executive officer generally include the president, secretary and treasurer of the registrant, any vice president in charge of a principal business function, and any other person performing similar policy-making functions for the registrant. Recently, the definition in current Item 4 (proposed Item 402) of Regulation S–K (Management Remuneration and Transactions) was revised to indicate that an executive officer of a subsidiary may be an executive officer of the registrant if the officer performs similar policy making functions for the registrant. As the Commission noted in the release proposing and adopting the change, the additional language was designed to clarify the initial intention regarding the scope of the term rather than to expand its meaning.[22] The Commission believes that this conclusion is implicit in the other definitions. Accordingly, the Commission is proposing to use as the definition of executive officer that which is contained in current Item 4 of Regulation S–K. The Commission also notes that the definitions of officer and executive officer both include the secretary and treasurer of the registrant, and requests specific comment on whether a secretary or treasurer automatically should be deemed an executive officer or whether such person should be deemed an executive officer only if such person performs policy-making functions.

Three definitions, which are for the most part identical in Rule 405 and Rule 12b–2, are proposed to be modified to conform with case law and accounting provisions. The current definition of the term "material" is the same as that adopted in 1937 and has not been revised in light of the Supreme Court's decision in *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438 (1976). In *Northway*, the Supreme Court rejected a test of materiality which would include all facts which a reasonable shareholder might consider important.[23] Instead, the Supreme Court found that the general standard of materiality which best comports with Rule 14a–9 (17 CFR 240.14a–9) is that an omitted fact is material if there is a substantial likelihood that a shareholder would consider it important in deciding how to vote.[24]

As noted above, the *Northway* standard was developed in the context of Rule 14a–9, an anti-fraud provision under the proxy rules; however, the standard has been applied by courts in other anti-fraud contexts[25] as well as most other areas of the federal securities laws where the question of materiality has arisen.[26] Based on the trend to apply the *Northway* standard in every type of federal securities law violation, it seems clear that the test of materiality developed by the Supreme Court in *Northway* would be applied for any purpose under the Securities Act and the Exchange Act and that the definition of

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Securities Exchange Act Release No. 10129 (April 27, 1973) (38 FR 11449).

[17] *See, e.g.*, Securities Act Release No. 6235 (September 2, 1980) (45 FR 63693, 63707).

[18] This definition is proposed to be deleted from Form S–8 in light of the proposed addition of the definition to Rule 405. *See* Securities Act Release No. 6337 (August 6, 1981).

[19] Proposed Form S–3, which will replace Form S–16 if adopted, does not include a definition of a dividend or interest reinvestment plan in light of the proposed adoption of the definition in Rule 405.

[20] *See, e.g.*, the proposed amendments to Rules 464, 473, 475a, 477 and 485, discussed *infra*.

[21] Definitions of the term "executive officer" are currently found in Rule 13e–3 (17 CFR 240.13e–3), Rule 13e–4 (17 CFR 240.13e–4), Schedule 13D (17 CFR 240.13d–101), Rule 14a–3 (17 CFR 240.14a–3), Rule 14c–3 (17 CFR 240.14c–3) and Rule 14d–1 (17 CFR 240.14d–1) under the Exchange Act; Instruction 1(b) to Item 4(a) of Regulation S–K (17 CFR 229.20); and Rule 240 (17 CFR 230.240) and Rule 242 (17 CFR 230.242) under the Securities Act. If the definition of the term "executive officer" is adopted in Rules 405 and 12b–2, all the definitions in these rules and regulations will be deleted.

[22] Securities Act Release No. 6261 (Nov. 14, 1980) (45 FR 76928); Securities Act Release No. 6210 (May 6, 1980).

[23] 426 U.S. at 445.

[24] *Id.* at 449.

[25] *See e.g.*, Rule 10b–5 (17 CFR 240.10b–5) (*ITT, an Int'l Inv. Trust* v. *Cornfeld*, 619 F.2d 909 (2d Cir. 1980)); Section 14(e) under the Exchange Act (*Piper* v. *Chris-Craft Industries, Inc.*, 430 U.S. 1 (1976)); and Section 17(a) under the Securities Act (*Steadman* v. *Sec. & Exch. Comm'n*, 603 F.2d 1126 (5th Cir. 1979)).

[26] *See, e.g.*, Section 11 under the Securities Act (*Greenapple* v. *Detroit Edison Co.*, 468 F. Supp. 702 (S.D.N.Y. 1979), *Ross* v. *Warner*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,735 (S.D.N.Y. 1979)); Section 5 under the Securities Act (*Sec. & Exch. Comm'n* v. *Murphy*, 626 F.2d 633 (9th Cir. 1980)); general test of materiality (*Alton Box Bd. Co.* v. *Goldman Sachs & Co.*, 560 F.2d 916 (8th Cir. 1977).

materiality under those acts should reflect this standard. As proposed, the definition states that the term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase (buy or sell under Rule 12b–2) the security registered. The Commission requests specific comment on whether any other formulation of the definition of the term "material" would better implement the standard set forth in *Northway*.

The definition of the terms "certified" and "significant subsidiary" are proposed to be amended to conform the use of those terms for accounting purposes in Rule 1–02 of Regulation S–X (17 CFR 210.1–02). The definition of the term "certified," if adopted, would provide that when the term is used in regard to financial statements it means examined and reported upon with an opinion expressed by an independent public or certified public accountant. The proposed modification to the definition of the term "significant subsidiary" is to conform the percentage test used in Rules 405 and 12b–2 (15 percent) to the test in Rule 1–02 (10 percent).[27]

The final propsal with respect to the definitions in Rules 405 and 12b–2 concerns the definition of the term "promoter." In the Guides Release, the Commission proposed that Guide 9, which permits persons coming within the definition of the term "promoters" to be referred to as "founders" or "organizers," be eliminated as unnecessary. However, the Commission requested specific comment as to whether the definition of promoter should be amended to permit explicitly the use of the alternative terminology. In response to the request for comment, four commentators agreed that it would be helpful to amend the definition of promoter in this manner, while a fifth commentator recommended that Guide 9 be incorporated into the definition. In response to this comment, the Commission proposes to amend the definition of the term "promoter" by restructuring the definition and by adding a new paragraph. The proposed paragraph states that all persons coming within the definition of the term "promoters" may be referred to as "founders" or "organizers" or by another term provided that the term used is reasonably descriptive of those persons' activities with respect to the issuer.

3. *Incorporation by Reference.*

Note.—The term "incorporation by reference" as used in this rule and in the integrated disclosure system generally refers only to the Securities Act of 1933, the Securities Exchange Act of 1934, and the regulations promulgated thereunder.

The present rules on incorporation by reference under the Securities Act are set forth in Rules 411, 412, 422, and 447 (17 CFR 230.411, 230.412, 230.422 and 230.447). The provisions of Rules 411, 412, and 422 are proposed to be consolidated, in revised form, in Rule 411. Rule 447, which relates to incorporation of exhibits by reference, would be modified only in a minor respect. Similarly, the present provisions on incorporation by reference under the Exchange Act in Rules 12b–23 and 12b–24 (17 CFR 240.12b–23 and 240.12b–24) would be consolidated, in revised form, in Rule 12b–23.[28] Rule 12b–32 (17 CFR 240.12b–32) on incorporation of exhibits by reference would be unchanged. Rule 412, Rule 422 and Rule 12b–24 would be deleted. The Commission also is proposing a new Rule 412 on the effective date of incorporated documents and a new Rule 418 on modifying and superseding statements as part of a separate release on due diligence obligations.[29]

The revised rules under the Securities Act reflect three basic judgments: (1) incorporation by reference into a prospectus should be restricted in accordance with specific rules; (2) incorporation by reference into non-prospectus portions of a registration statement should be allowed without requiring the filing of the incorporated material if such material has previously been filed with the Commission and is retained in the publicly available records of the Commission; and (3) if the incorporated material has not been filed with the Commission and is not part of the publicly available records, then incorporation by reference into the non-prospectus portions of a registration statement should be allowed if the incorporated material is filed as an exhibit to the registration statement.

The exception to paragraph (a) of proposed Rule 411 permits incorporation by reference into a prospectus only where the appropriate registration statement form requires or permits the registrant to do so. Form S–16 (17 CFR 239.27) and Form S–8 (17 CFR 239.16b) presently require incorporation into a prospectus, and proposed Forms S–3 and S–2 would also do so. Proposed Rule 411(a), unlike Rule 411(a) and Rule 422, would not contain provisions for incorporation by reference where a prospectus contains a summary of a document which is an exhibit to the registration statement, since the provisions of Rule 422 regarding the nature of such a summary are being deleted as unnecessary.[30]

Paragraph (b) of proposed Rule 411 allows incorporation by reference of information into the non-prospectus portion of a registration statement (other than exhibits). Paragraph (b)(2) of the proposal sets forth special provisions relating to incorporation of financial statements, drawn from current Rule 411(b) and also current Rule 412b–23(c): essentially, these provisions require that only full financial statements meeting applicable requirements can be incorporated and thereby prevent partial incorporation of financial statement information. Proposed paragraph (b)(3) continues the provision of Rule 411(b), allowing incorporation of prospectus material into the non-prospectus portion of a registration statement. Rule 411(b)(4) indicates that if the information incorporated by reference is not in a previous filing retained by the Commission, as set forth in Rule 24 of the Rules of Practice (17 CFR 201.24), such information must be filed as an exhibit to the registration statement.

Paragraph (c) of proposed Rule 411 includes general provisions, drawn from current Rule 412, requiring clear designation of incorporated matter and prohibiting incorporation where it would cause a statement to be incomplete, unclear or misleading. This paragraph also refers specifically to the provisions in Rule 24 restricting incorporation by reference to documents which themselves incorporate other information by reference.

[27] The definition of the term "significant subsidiary" in Rule 1–02 of Regulation S–X is currently the subject of another rule-making proceeding. *See* Securities Act Release No. 6316 (May 11, 1981) [46 FR 27344]. The Commission believes that, to the extent possible and appropriate, the terms as used in Regulations C and S–X should be uniform but requests specific comment on whether distinctions are warranted and, if so, in what areas.

[28] The revised Exchange Act provision also would be applicable to incorporation by reference in Schedules 13D, 13G, 13E–3 and 13E–4 under the Exchange Act (17 CFR 240.13d–101, 240.13d–102, 240.13e–100, 240.13e–101). There are also incorporation by reference provisions in Schedules 14D–1 and 14D–9 (17 CFR 240.14d–100, 240.14d–101), which are not covered by Regulation 12B. The Commission expects to consider the incorporation by reference provisions in these Schedules in a subsequent rulemaking proceeding.

[29] Securities Act Release No. 6335 (August 6, 1981).

[30] *See* "III-B. Form and Content of Prospectuses" herein.

Proposed Rule 447 would continue to be the exclusive provision relating to incorporation of exhibits by reference in Securities Act registration (c) regarding number of copies. Currently, that paragraph requires that, if a document is incorporated by reference in a registration statement and the number of copies originally filed was less than those required for a registration statement, the registrant must file sufficient additional copies to meet the filing requirement. The Commission believes this procedure is no longer necessary in light of its current document retrieval system.

The provisions on incorporation by reference under the Exchange Act would be similar to those for the non-prospectus portions of registration statements under the Securities Act, except that incorporated matter would generally have to be filed as an exhibit to the Exchange Act report. [31]

In addition, an amendment to Rule 24 of the Rules of Practice is proposed in order to allow incorporation by reference of documents which themselves incorporate material by reference, if incorporation of such documents is required by specific rule or form. That change would take account of the fact that Form S–16, Form S–8 and Form S–15 registration statements require, and proposed Form S–3 and Form S–2 registration statements would require, incorporation by reference of Exchange Act reports including the most recent Form 10–K annual report, which itself specifically requires incorporation by reference of the registrants's proxy statement.

The limitations prohibiting incorporation by reference to material included in exhibits, currently set forth in Rule 12b–23(a) and the last sentence of Rule 12b–24, are proposed to be deleted. While it is generally proper to prevent prospectuses from incorporating exhibits which are not delivered, the Commission does not believe it is necessary to impose such limits in connection with Exchange Act reports which are not actually delivered in registered public offerings of securities. (The Commission also is proposing to rescind the remainder of Rule 12b–24 which, like Rule 422, allows summaries of documents attached as exhibits.)

4. *Supplemental Information.* Rule 419, proposed in the Guides Release as Rule 400b (46 FR 94, 98, 107), is proposed to be expanded to include the provisions on supplemental information currently contained in various provisions of Regulations C and S–K and the Guides. Supplemental information furnished by a registrant is a valuable mechanism used by the Commission and its staff in reviewing and commenting on registration statements. The proposal is designed to facilitate the expeditious staff review of those registration statements.

Unlike the present provisions that generally require automatic submission of supplemental information, the proposed rule would require submission only on request of the Commission or staff. Under recently adopted staff procedures, some registration statements are not reviewed, and it is unnecessary to obtain supplemental information in those instances. In any event, requests for supplemental information should be discretionary, and there is no need for automatic submission.

The proposal indicates that registrants should have supplemental information available for submission on request and lists materials that may be requested. The list is expressly non-exclusive, and other materials could be requested as well. However, the list does give notice to a registrant of certain types of information that may be requested and provides an opportunity to prepare such information in advance. If a request is then made for information already prepared by the registrant, delays in processing of the registration statement will be avoided.

Paragraphs (a)(1) through (a)(3) of the proposal, which were derived from Guide 42, regarding reports and memoranda concerning the registrant, were formerly proposed in the Guides Release as Rule 424a (46 FR 98, 108). These paragraphs are substantially similar to paragraphs (a) and (b)(1) of proposed Rule 424a. Paragraph (a)(2) is substantially unchanged. Paragraph (a)(3), concerning reports relating to broad aspects of the business, is now proposed to apply only to those registrants not eligible to use proposed Form S–2, *i.e.*, generally, those registrants that have not been subject to the Exchange Act reporting requirements for at least three years. Also, the requirement to describe the distribution of reports, or state that there are no reports, applies only to reports described in paragraph (a)(1), those prepared for external use.

Paragraph (a)(4) of the proposed rule, relating to the due diligence inquiry of underwriters in certain offerings, is a codification of similar provisions in Guide 16, regarding underwriters' experience and due diligence inquiry, which was proposed in the Guides Release as part of Rule 400b. In view of the commentators' concern with the vagueness of the reference to "new and speculative issues" as used in the Guide, proposed paragraph (a)(4) has been revised to refer to issues of first time public issuers and issues requiring notice of risk factors on the cover page of the prospectus.

Proposed Rule 419(a)(5), relating to secondary offerings at the market, is a codification of the informational requirements of Guide 53. The codification was proposed in the Guides Release as part of the Regulation S–K item relating to the distribution of securities (46 FR 100, 104) and is being reproposed as part of Rule 419 without substantial change. As noted in the Regulation S–K release, published today, the Commission believes that the information sought by Guide 53 is more appropriately obtained supplementally rather than as part of the registration statement. The admonition in Guide 53 concerning the need to assure adequate compliance with the anti-manipulation rules of the Exchange Act would be retained in the form of a condition of acceleration in proposed Rule 461 regarding acceleration of effective date. [32]

Paragraph (a)(6) of the proposal, relating to new products and businesses, is derived without substantive change from the instruction to paragraph (c) of current Item 1 (proposed Item 101) of Regulation S–K. Likewise, proposed paragraph (7) relating to reserve reports is substantially similar to Instruction 4 to paragraph (a) of current Item 2 (proposed Item 102) of Regulation S–K. These provisions also are included in proposed Rule 419 to provide notice to registrants in a single location regarding supplemental information.

Proposed Rule 419(a)(8), concerning the distribution of the prospectuses used in an offering of securities registered under the Securities Act, is derived from Guide 19, regarding distribution of preliminary prospectuses. In the Guides Release (46 FR 94–95, 109), provisions based on Guide 19 were proposed to be added to Rule 460 (17 CFR 230.460), indicating that the Commission could request specified information on distribution of the preliminary prospectus. The proposed provisions are now relocated in Rule 419. The only change is to make clear that the information specified is required for each form of preliminary prospectus used in the distribution.

[31] The requirement of an exhibit filing is alleviated substantially by the provisions of Forms 8-K (17 CFR 249.308) and 10-Q (17 CFR 249.308a) that allow registrants not to present required information which has been previously filed under the Exchange Act.

[32] *See* "III–2. Filing Fees and Effective Dates—Acceleration" herein.

Paragraph (b) of proposed Rule 419 specifically states that supplemental information furnished pursuant to the rule shall not be required to be filed with or deemed part of the registration statement. That paragraph also includes the provisions regarding return of documents furnished supplementally which were included in the Guides Release as proposed Rule 424a (b)(2), derived from Guide 42.

Proposed Rule 400a, originally proposed in the Guides Release, based on Guide 1 (46 FR 86–87, 107), is proposed to be withdrawn since the Commission agrees with the commentators that Rule 202.2 of the Commission's Informal and Other Procedures (17 CFR 202.2) adequately covers prefiling conferences. In addition, the proposal to adopt Rules 400b and 424a, made in the Guides Release, is proposed to be withdrawn since their provisions are now substantially incorporated in new proposed Rule 419.

5. *Other.* The Commission also is proposing a number of other changes to the general requirements set forth in Regulation C.

Rule 402 (17 CFR 230.402) is proposed to be revised to delete outdated requirements, to amend the number of copies requirement, to avoid the duplication of disclosure requirements and to otherwise simplify the rule. The provision with respect to the signing of the "ribbon" copy of a registration statement is proposed to be deleted as out-moded, and the remainder of paragraph (b) is proposed to be added to a revised paragraph (a) of Rule 402. A new sentence of proposed paragraph (b) (currently paragraph (c) of Rule 402) would provide that, where a registration statement incorporates into a prospectus documents which are required to be delivered with the prospectus in lieu of prospectus presentation,[33] the additional copies of the registration statement required to be furnished to the Commission shall be accompanied by copies of such delivered documents. These copies are necessary for staff review and, since they already are being delivered with the prospectus, it is not anticipated that providing them to the Commission will be an undue burden on registrants. Moreover, proposed paragraph (b) also provides that no other exhibits need accompany the ten additional copies of the registration statement. If adopted, this proposal would rescind the current requirement to supply copies of indentures relating to the securities being registered and copies of underwriting contracts and other documents relating to the distribution of securities with the additional copies of the registration statement. Current paragraph (c) of Rule 402, concerning powers of attorney, is proposed to be added to the exhibit requirements.[34] Corresponding changes are proposed to be made in Rule 12b–11 (17 CFR 240.12b–11) under the Exchange Act.

Rule 403 (17 CFR 230.403), which sets forth requirements as to paper, printing and language, is proposed to be amended to make its requirements specifically applicable to registration statements as well as to applications and reports. Paragraph (c) of Rule 403 is proposed to be revised to provide that, where any exhibit or other paper or document filed with the registration statement is in a foreign language, a registration statement is permitted to be accompanied by an English language version or summary in lieu of an English translation.[35] Corresponding changes are proposed to be made in Rule 12b–12 (17 CFR 240.12b–12) under the Exchange Act.

Rule 404 (17 CFR 230.404), governing the preparation of a registration statement, is proposed in revised form. The language and format of the proposal incorporates the general instructions contained in the registration forms, which often duplicated the provisions of Rule 404. If proposed Rule 404 is adopted, the general instructions in the registration forms would be deleted. In general, proposed Rule 404 is designed to present a cursory overview of the documents and information that make up a registration statement and to indicate the portion of the information in the registration forms which is required to be included in the registration statement and prospectus. Current paragraphs (c) and (d), regarding the facing page and cross reference sheet, are proposed to be deleted and relocated in proposed Item 501 of Regulation S–K. These provisions also would be included in proposed Rule 425y so they would remain applicable to registration statements of investment companies.[36] The last sentence of Rule 404(e), which refers to Rule 433, is proposed to be added to the proposed revision of that rule.[37]

The provisions of Rule 406 (17 CFR 230.406), regarding the disclosure of the title of securities, are being proposed as part of the Instruction to proposed Item 202 of Regulation S–K, "Description of Registrant's Securities." To avoid duplication, the Commission proposes to delete Rule 406, except that a new Rule 406y will be proposed to provide the disclosure requirements for registration forms available to registered investment companies.

Rule 407 (17 CFR 230.407), which sets forth certain interpretations of the terms referred to in Regulation C concerning the registrant, computation of time, the future and the holder of a position or office, is proposed to be deleted as unnecessary. The intepretations set forth in this rule are either obvious, contained in other rules or appear to be of marginal benefit to registrants. Rule 12b–4 (17 CFR 240.12b–4), which contains similar provisions, also is proposed to be deleted.

Rule 413 (17 CFR 230.413) provides that the registration of additional securities of the same class as other securities for which a registration statement is already in effect shall be effected through a separate registration statement relating to additional securities. The Commission proposes to amend the current exception for additional securities registered as provided in Section 24(e)(1) of the Investment Company Act of 1940 to include additional securities registered as provided in Section 24(f) of that Act.[38]

Rule 414 (17 CFR 230.414) sets forth the circumstances under which a registration statement of a predecessor issuer shall be deemed to be the registration statement of the successor issuer. The Commission proposes to amend Rule 414 to permit a foreign issuer, which is not exempted by Rule 3a12–3 (17 CFR 240.3a12–3) under the Exchange Act [39] from the proxy solicitation provisions of the Exchange Act, to take advantage of the provisions of the rule when changing the country of incorporation of the enterprise. In addition, the Commission proposes a technical revision to paragraph (c) of Rule 414 to include a proxy solicitation

[33] For example, Form S–15 requires that the registrant's latest annual report to security holders accompany the prospectus, and proposed Form S–2 provides that, where the registrant chooses to incorporate by reference information from its annual report to security holders in the prospectus, it must accompany the prospectus.

[34] *See* "III–D. Exhibits" herein.

[35] The proposed deletion of Rule 403(e), concerning an exhibit index, is discussed in "III–D Exhibits" herein.

[36] *See* "III–B. Form and Content of Prospectuses" herein.

[37] *See* "III–B. Form and Content of Prospectuses" herein.

[38] Section 24(f) of the Investment Company Act of 1940 and Rule 24f–2 (17 CFR 270.24f–2) adopted thereunder permit certain investment companies to register an indefinite number of securities under the Act.

[39] Rule 3a12–3 provides an exemption from Sections 14(a), 14(b), 14(c), 14(f) and 16 under the Exchange Act for the securities of certain foreign issuers.

pursuant to Section 20(a) of the Investment Company Act to make it clear that investment companies are able to utilize this provision.

The Commission proposes to amend Rule 415 (17 CFR 230.415), governing registration statements for securities to be offered through competitive bidding, by deleting the undertakings in paragraph (a). All undertakings, including those concerning competitive bidding, are proposed to be centralized in proposed Item 512 of Regulation S–K. The proposed deletion would avoid duplication.

B. *Form and Content of Prospectuses*

Rule 421 (17 CFR 230.421), as proposed, reflects several revisions, none of which would result in substantive changes in the procedures to be followed by registrants. Rule 421(c), which now requires a table of contents, would be deleted in this rule and relocated in proposed Item 502 of Regulation S–K and included in Rule 425y.[40] Current Rule 421(d) would be recast as Rule 421(c).

Rule 422 (17 CFR 230.422), relating to the nature of required summaries or outlines of documents, is proposed to be deleted as unnecessary. Likewise, Rule 12b–24 (17 CFR 240.12b–24) on the same subject is also proposed to be deleted. Accordingly, the provisions of Rule 422 and Rule 12b–24 that relate to incorporation by reference of documents in required summaries or outlines also are proposed to be deleted.[41]

Rules 425, 425a, 426, and 433(b) (17 CFR 230.425, 230.425a, 230.426, 230.433(b)) are proposed to be deleted, and their provisions incorporated in proposed Items 501 and 502 of Regulation S–K. These provisions require statements in prospectuses regarding the role of the Commission, delivery of prospectuses, stabilizing, and use of a prospectus before the effective date of the registration statement. Rule 425y is proposed in order to retain the applicability of these provisions, and also the requirement of a table of contents from existing Rule 421(c), in registration statement forms available to registered investment companies.

Rules 427 (17 CFR 230.427), regarding the contents of a prospectus used after nine months, is proposed to be amended to delete paragraph (b), relating to the use of a new registration form for post-effective amendments. This provision would be superseded by proposed Rule 401.[42]

Rule 428 (17 CFR 230.428), regarding invitations for competitive bids, is proposed to be revised to delete the requirement to file an invitation as an exhibit. This requirement is proposed to be relocated in the exhibit requirements of proposed Item 601 of Regulation S–K.

The Commission is proposing to delete, as no longer necessary, Rule 430 (17 CFR 230.430), regarding prospectuses for employees' savings, profit sharing or pension plans, and Rule 431 (17 CFR 230.431), regarding propectuses supplementing preliminary material supplied previously. The Commission also is proposing to withdraw the proposal in the Guides Release (46 FR 99–100, 108) to codify Guide 49 in a new Rule 434e, regarding prospectuses where a company and its employee plan have different fiscal years. The experience of the Commission indicates that these provisions are seldom used and are not rules of general application appropriate for inclusion in Regulation C.

Rule 432 (17 CFR 230.432), regarding application of amendments to rules governing contents of prospectuses, is proposed to be delete. It would be superseded by proposed Rule 401.[43]

Rule 433 (17 CFR 230.433), regarding prospectuses for use prior to the effective date of the registration statement, is proposed to be modified not only to delete paragraph (b) (see *infra*) but also to add the substance of existing Rule 404(e) declaring such prospectuses to be parts of the registration statement for purposes of Section 7 of the Securities Act.

Rule 434a (17 CFR 230.434a), on summary prospectuses, is proposed to be revised to delete the criteria for use of summary prospectuses that the Commission believes are outdated and no longer relevant in the integrated disclosure system, to incorporate criteria used elsewhere in the integrated system, and also to modify the provisions of tabular data to conform with proposed Forms S–1 and S–2.

Rule 434c (17 CFR 230.434c), regarding use of Japanese prospectuses in Japan, is proposed to be expanded to cover any foreign language prospectus used in any foreign country, since the provisions of the Rule, if necessary at all, appear equally relevant to foreign countries generally. The Commission, however, also is considering deletion of the entire rule and invites specific comment on the need for the Rule as well as the proposed revisions.

Rule 434d (17 CFR 230.434d), regarding advertising by an investment company, has been revised to expand its coverage to business development companies.[44]

C. *Written Consents*

The Commission is proposing amendments to certain of its rules dealing with written consents to delete duplicative provisions, to incorporate certain material from the Guides, and to otherwise implement integration of the disclosure system.

Rule 435 (17 CFR 230.435), which sets forth the formal requirements as to consents, is proposed to be deleted since the requirements are set forth in proposed Item 601(b)(24) of Regulation S–K. As proposed in the Guides Release in connection with the rescission of Guide 38 (46 FR 97, 108), the language of the rule has been broadened to include opinions as well as reports of experts. Also, in response to commentators' concerns, the reference to counsel has been added to the proposed item to parallel the existing provisions in the Guides. This latter reference also is proposed to be added to Rule 436 (17 CFR 230.436).

Rule 436, which sets forth additional requirements concerning consents in special cases, is proposed to be modified in several respects. First, it is proposed to amend paragraphs (a) and (b) to specify that, where a written consent is required to be filed, it shall be filed as an exhibit to the registration statement. A similar change is proposed to be made to Rule 439 (17 CFR 230.439), regarding consent to use of material incorporated by reference.

Second, as proposed in the Guides Release, based on Guide 38 (46 FR 97, 108), paragraphs (e) and (f) of Rule 436 have been reproposed to state that where counsel is named as having acted for the underwriters or selling security holders, no consent will be required by reason of his being named as having acted in such capacity, and where the opinion of one counsel relies upon the opinion of another counsel, the consent of the counsel whose prepared opinion is relied upon need not be furnished. In the Guides Release, the Commission specifically solicited comment on whether a consent should be obtained from an attorney whose opinion is relied on by another attorney in connection with rendering an opinion on the legality of the issue, and the relying attorney is

[40] *See* discussion, *infra*.

[41] *See* "III–A–3. General Requirements—Incorporation by Reference" herein.

[42] *See* "III-A-1. General Requirements—Application of Forms and Rules" herein.

[43] *See* "III A–1. General Requirements—Application of Forms and Rules" herein.

[44] Business development companies are a new class of investment companies created by the Small Business Investment Incentive Act of 1980, Pub. L. 96–477 (effective October 20, 1980), which register under the Exchange Act rather than the Investment Company Act of 1940. *See* Sections 54(c) and 59 of the Investment Company Act [15 U.S.C. 80a–53(a), 80a–58]

named and furnishes the consent. Most of the commentators believed that it was unnecessary to obtain a consent from an attorney in connection with the rendering of an opinion on the legality of the issue. Moreover, as one commentator pointed out, "in rendering his opinion the relying attorney, who is named and whose consent is furnished has in all material respects satisfied himself as to the competence of the other attorney."

Finally, as more fully discussed in the separate release on security rating disclosure,[45] the Commission is proposing to add paragraph (g) to Rule 436 to provide that a security rating shall not be considered a part of the registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act.

Rule 439 (17 CFR 230.439), which sets forth the requirements of consents to the use of information incorporated by reference, is proposed to be modified to cover the written consents of persons named in information incorporated into the registration statement by reference to a document filed after the effective date of such registration statement. Forms S-8 [46] and S-16 [47] contain instructions concerning this subject.[48] In order to eliminate duplication and clarify the instruction, a sentence is proposed to be added to Rule 439 to provide that, where a consent is required with respect to information incorporated by reference after the effective date of the registration statement, the consent shall be filed in the form of an amendment to the registration statement no later than the date on which such information is filed with the Commission, unless express consent to incorporation by reference into the registration statement is contained in the incorporated information when it is filed.

D. Exhibits

The Commission is proposing to delete a number of rules, and parts of rules, concerning exhibit requirements since they are proposed to be included in an expanded exhibits item in Item 601 of Regulation S-K. First, Rule 402(c) (17 CFR 230.402(c)), which requires copies of powers of attorney to be filed with a registration statement, is proposed to be replaced by Item 601(b)(25) of Regulation S-K. Second, Rule 403(e) (17 CFR 230.403(e)), which requires an exhibit index, is proposed to be replaced by Item 602(a)(2) of Regulation S-K. Third, as noted above, Rule 435, which sets forth the formal requirements as to consents, is proposed to be replaced by a new exhibit requirement in Item 601(b)(24) of Regulation S-K. Fourth, Rule 445 (17 CFR 230.455), which permits additional exhibits, is proposed to be replaced by Item 601(b)(28) of Regulation S-K. Fifth, Rule 446 (17 CFR 230.446), which permits the omission of substantially identical documents, is proposed to be replaced by Instruction 2 to Item 601 of Regulation S-K. Finally, Rule 472(d) (17 CFR 230.472(d)), which deals with immaterial changes in exhibits, is proposed to be replaced by Instruction 1 to Item 601 of Regulation S-K.[49]

With respect to those registration forms for registration of securities of investment companies, the Commission is proposing Rule 445y to retain, for those registration statements, the exhibit provisions proposed to be moved from Regulation C to Regulation S-K.

E. Filing Fees and Effective Dates

1. *Fees.* Rule 457 (17 CFR 230.457) contains the provisions for computation of the fee for registration of securities set forth in Section 6(b) of the Securities Act. Questions have sometimes arisen concerning calculation of the fee in certain business combination transactions. The Commission is therefore proposing to amend paragraph (e) of the rule to make clear that it covers reclassifications, recapitalizations, mergers, consolidations and similar acquisition transactions in which the registrant receives and cancels securities, and exchanges or substitutes the registered securities. Transactions involving an exchange of securities for some or all the assets of an entity, followed by distribution of those securities to the owners of the entity (by dividend, partial or complete liquidation or otherwise), would appear to be covered by paragraph (c) of Rule 457, relating to an exchange of securities for assets, but the Commission specifically requests comment on whether a separate provision is required for such sale of assets transactions. Also, the Commission requests comment on whether, to the extent permitted by statutory authority, other changes to Rule 457 would be appropriate to improve consistency of treatment or to accomplish other objectives. Finally, a provision (new paragraph (m)) is proposed to be added to make clear that no separate fee is payable when guarantees are registered along with the securities to which the guarantees relate.

2. *Acceleration.* Rule 460 (17 CFR 230.460), regarding distribution of preliminary prospectuses, and Rule 461 (17 CFR 230.461), regarding acceleration of effective dates of registration statements, are proposed to be reorganized. Rule 460 would contain provisions relating to the obligations with respect to the distribution of the preliminary prospectus, and Rule 461 would contain provisions on requests for and conditions to acceleration of the effectiveness of registration statements. In addition, the list in Rule 460 of the exceptions to the general requirement to distribute preliminary prospectuses has been expanded, as suggested by commentators, to cover additional circumstances in which such a distribution is not required.[50]

Various provisions of current Rule 460 are proposed to be moved to Rule 461. These include: paragraph (c), regarding possible withholding of acceleration if information correcting a preliminary prospectus has not been circulated (proposed Rule 461(b)(2)); paragraph (f), regarding possible withholding of acceleration if no effort has been made to make the prospectus readable (proposed Rule 461(b)(1)); the Note indicating general standards for acceleration (proposed Rule 461(b)); Note paragraph (c), regarding possible withholding of acceleration where the issuer or underwriter is under Commission investigation (proposed Rule 461(b)(3)); Note paragraph (d), regarding possible withholding of acceleration based on financial condition of underwriters in firm commitment underwritings (proposed

[45] Securities Act Release No. 6336 (August 6, 1981).

[46] Instruction to Item 12 of Form S-8.

[47] Instruction to Item 7 of Form S-16.

[48] The instruction in Form S-8 is proposed to be deleted in the release designed to implement the integrated disclosure program by revising the registration forms under the Securities Act (*see* Securities Act Release No. 6337 (August 6, 1981)) and the instruction to Form S-16 has not been retained in proposed Form S-3 (*see* Securities Act Release No. 6331 (August 6, 1981)).

[49] Rule 472(a) (17 CFR 230.472(a)), which sets forth the required number of copies of every amendment, also is proposed to be amended, consistent with a similar proposed change to Rule 402(b), to require that, where documents incorporated in the prospectus are required to be delivered in lieu of prospectus presentation, the additional copies required to be furnished to the Commission shall be accompanied by copies of such documents. *See* "III-A-5. General Requirements—Other" and "III-F. Amendments and Withdrawals" herein.

[50] The existing provisions are contained in current paragraphs (d) and (c) of Rule 460; the expanded provisions would be in a new paragraph (c) of that rule. The new provisions except from the requirement of preliminary distribution certain subscription offerings (the same as a proposal in the Guides Release derived from Guide 19—*see* 46 FR 94, 109) and exchange offers and offerings in business combination transactions described in Rule 145 (17 CFR 230.145).

Rule 461(b)(4)); and Note paragraph (e), regarding possible withholding of acceleration due to transactions artificially affecting the market (proposed Rule 461(b)(5)).

Additional proposed changes to Rule 461 include

(1) deletion of the requirement of an acceleration request from selling security holders—the Commission no longer believes such requests are necessary (proposed Rule 461(a));

(2) clarification of the requirement of an acceleration request from the managing underwriters to indicate that, where there are no managing underwriters, the acceleration request must be from each principal underwriter (proposed Rule 461(a));

(3) provisions initially proposed in the Guides Release (46 FR 94, 109), based on Guide 17, to require advice to the Commission that the National Association of Securities Dealers, Inc. ("NASD") has given any required clearance of the underwriters' compensation; [51]

(4) The addition to the list of considerations in granting acceleration, as proposed by the Guides Release (46 FR 94, 100, 109), of paragraphs (b) (6) and (7) relating to NASD clearance of underwriters' compensation [52] (derived from Guide 17) and measures undertaken to assure compliance in secondary offerings with anti-manipulative rules under the Exchange Act rules (derived from Guide 53), respectively.

One proposal in the Guides Release (46 FR 96, 109) relating to Rule 460 is now proposed to be withdrawn. It would have codified Guide 35 by providing for the possible withholding of acceleration if an underwriter had the right to designate a director who could be an affiliate of the underwriter but had not yet done so. The Commission believes that the subject matter of Guide 35 is more properly a disclosure matter and has proposed in Item 508 of Regulation S-K to require disclosure concerning directors who may be selected by underwriters.

The undertakings currently required by the Note paragraphs (a) and (b) in Rule 460, concerning the submission of indemnification provisions to a court, have been deleted from both Rules 460 and 461 and incorporated in proposed Item 512 of Regulation S-K. Rules 461y is proposed to require such undertakings in registration statements on forms available to investment companies. No substantive changes have been made in the requirement for these undertakings when acceleration is requested.

Paragraph (c) of proposed Rule 461 reproposes a provision, which was proposed in the Guides Release to be added as a part of the Note to Rule 460 (46 FR 99, 109), relating to insurance of persons against liabilities under the Securities Act. It provides that such insurance, whether its cost is borne by the registrant or any other person, will not be a bar to acceleration. However, this provision is qualified so as not to apply to investment companies registered under the Investment Company Act and business development companies. As to these entities, separate provisions are added to indicate that acceleration may be withheld if the registrant is organized or administered pursuant to any instrument (including an insurance contract) protecting an officer or director of such a company from liability for willful, gross or reckless malfeasance in office. Because of Section 17(h) of the Investment Company Act, the Commission has taken the position that registered investment companies cannot insure their directors or officers against certain liabilities.[53]

3. *Other.* Changes in two other rules are proposed in the provisions of Regulation C on filing fees and effective dates.

Rule 462 (17 CFR 230.462) calls for prompt notice of any delay or suspension of an offering occurring within 15 days after the effective date of the registration statement. The notice regarding the conduct of offerings thus is limited to the period immediately after effectiveness. Such notice is generally of marginal utility and accordingly, the Commission proposes that Rule 462 be deleted.

The Commission is proposing to expand the provisions which currently allow form S-8 (17 CFR 239.16b) registration statements for employee benefit plans to become effective automatically twenty days after filing under Section 8(a) of the Securities Act, and for post-effective amendments to Forms S-8 to become effective automatically on filing, to include registration statements for dividend or interest reinvestment plans on proposed Form S-3. This expansion in the use of automatic effectiveness to registration statements for dividend or interest reinvestment plans is proposed in the revisions to Rule 464 (17 CFR 230.464).[54]

In addition, it should be noted that proposed Rule 462a (17 CFR 230.462a), providing for registration of securities for delayed or continuous offering, is discussed in a separate release.[55] Further, although no changes are proposed in this release to Rule 463 (17 CFR 230.463), requiring reports on the results of certain offerings, the Commission is considering amendments previously proposed to Rule 463 in light of the comments received on that proposal.[56] Amendments to Rule 465 have been proposed separately.[57]

F. Amendments; Withdrawals

Several technical changes are proposed in the rules relating to amendment and withdrawal of registration statements. The last clause of Rule 470 (17 CFR 230.470), pertaining to rules applicable to amendments, is proposed to be deleted and the subject matter covered by revised Rule 401.[58] Rule 471 (17 CFR 230.471) is proposed to be amended by deleting the sentence in paragraph (a) referring to signing the ribbon copies,[59] and by conforming paragraph (b) with the proposed revisions on competitive bidding reflected in Rules 415 and 428.[60] Rule 472 (17 CFR 230.472) is proposed to be amended by deletion of paragraph (d) relating to exhibit amendments, and inclusion of its substance in proposed Rule 445y(d)(3) for registration statements filed by investment companies and also in proposed Item 601 itself.[61]

The Commission is proposing to allow registration statements for a dividend or interest reinvestment plan on proposed Forms S-3 to go effective automatically twenty days after filing pursuant to Section 8(a) of the Securities Act, and to

[51] In response to commentators concerns, it should be noted that delivery of a copy of the NASD letter is generally not necessary—oral advice will suffice in most cases.

[52] The language of this proposed paragraph has been revised to conform to the actual function of the NASD in reviewing compensation and other arrangements for underwriters.

[53] Investment Company Act Release No. 7221 (June 9, 1972) (37 FR 12790); Investment Company Act Release No. 11330 (September 4, 1980) (45 FR 67062). The reference to the indemnification provision in Section 17(h) is intended to relate only to the liabilities of directors and officers arising under the Securities Act as they might be affected by that provision. It is not intended to be dispositive of all questions relating to indemnification arising under Sections 17 (h) and (i) of the Investment Company Act.

[54] *See also* "III-F. Amendments; Withdrawals" herein.

[55] Securities Act Release No. 5334 (August 6, 1981).

[56] Securities Act Release No. 6251 (October 23, 1980) (45 FR 71811).

[57] Securities Act Release No. 6327 (July 8, 1981) (46 FR 36195).

[58] *See* "III-A-1. General Requirements—Application of Forms and Rules" herein.

[59] *See* "III-A-5. General Requirements—Other" herein.

[60] *See* "III-B. Form and Content of Prospectuses" herein.

[61] *See* "III-D. General Requirements—Exhibits" herein.

make post-effective amendments to such registration statements effective automatically on filing, in the same manner as currently provided for Form S-8 registration statements. Changes necessary to effectuate this purpose are proposed in Rules 473, 475, 475a and 477 (17 CFR 230.473, 230.475, 230.475a, 230.477).[62]

Rule 477 and Rule 479 (17 CFR 230.479), pertaining to withdrawal and abandonment of registration statements, include provisions (in paragraph (c) of each rule) that, when withdrawal or abandonment occurs, the registration statment will not be removed from the files but will be marked clearly to indicate that it has been withdrawn or declared abandoned. Under the Commission's present system for retaining official documents on microfiche, it is not practicable to indicate on the microfiche file copy that a registration statement has been withdrawn or abandoned. The Commission specifically requests comments on the need for this marking procedure and possible alternatives which would serve the interests of the Commission, the public and registrants.

G. Nondisclosure of Contract Provisions

Rule 485 (17 CFR 230.485) contains provisions relating to confidential treatment of contracts required to be disclosed under the Securities Act. In the Guides Release, the Commission proposed adding to the rule provisions, based on Guide 50, that (1) a registrant applying for confidential treatment should state whether it will permit disclosure of the contract to other government agencies, and (2) such willingness is a factor in considering the application.[63] In this release, the Commission is reproposing those changes in slightly revised form, and also is proposing to add to Rule 485 provisions to the effect that (3) an applicant should state the length of time for which confidential treatment is requested and include a justification of such period, and (4) the period requested is a factor in considering the application. This change reflects current staff practice and is similar to the provisions of Rule 24b-2 under the Exchange Act (17 CFR 240.24b-2) relating to confidential treatment.[64]

The procedures of Rule 485 are specifically not applicable to registration statements on Form S-8, which become effective automatically, and the Commission is proposing to add to this exclusion from those procedures registration statements for dividend and interest reinvestment plans on proposed Forms S-3, since these also are proposed to become effective automatically. The procedures set forth in Rule 485 provide for an application to be made when the registration statement is filed, followed by a decision, and opportunity to appeal. These procedures are not practical in connection with registration statements which become effective automatically twenty days after filing. As indicated in Form S-8 and proposed Form S-3, if an issue of confidential treatment arose in such a case, the Commission would be willing to consider an application prior to the filing of the registration statement. Registration statements for employee benefit plans on Form S-8 and for dividend and interest reinvestment plans on Form S-3 ordinarily include little or no business information (it is incorporated by reference), so that there may be no need for an elaborate set of confidential treatment procedures in such cases. The Commission specifically requests comment on whether rules for confidential treatment requests should be developed specifically for these cases.

IV. Request for Comments

Any interested person wishing to submit comments on the proposed amendments, as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. Moreover, any interested person wishing to submit comments on any provision of Regulation C or Regulation 12B not specifically discussed in this release is invited to do so. The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in the furtherance of the purposes of the Securities Act and the Exchange Act.

Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

1. By revising § 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 in which such document was physically filed. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By removing § 203.406, § 203.407, § 203.412, § 203.422, § 203.425, § 203.425a, § 203.426, § 203.430, § 203.431, § 203.432, § 203.434, § 203.435, § 203.445, § 203.446, § 203.462.

3. By amending Regulation C (§§ 230.400-230.494) by revising §§ 230.400-230.405, 230.411, 230.413-230.415, 230.421, 230.427, 230.428, 230.433, 230.434a, 230.434c, 230.434d, 230.436, 230.439, 230.457, 230.460, 230.461, 230.464, 230.465, 230.470-230.473, 230.475a, 230.477, 230.479, and 230.485; and by adding §§ 230.406y, 230.412, 230.418, 230.419, 230.425y, 230.445y, 230.461y, and 230.462a to read as follows:

Regulation C—Registration

§ 230.400 Application of §§ 230.400 to 230.494, inclusive.

Sections 230.400 to 230.494 shall govern every registration of securities under the Act, except that any provision in a form, or an item of Regulation S-K (17 CFR 229.001 *et seq.*) referred to in such form, covering the same subject matter as any such rule shall be controlling unless otherwise specifically provided in §§ 230.400 to 230.494.

General Requirements

§ 230.401 Requirements as to proper form.

(a) The form and contents of a registration statement and prospectus

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[62] *See* "III-E-3. Filing Fees and Effective Dates—Other" herein

[63] 46 FR at 100, 110.

[64] *See* Securities Act Release No. 5700 (April 28, 1976) (41 FR 20578).

shall conform to the applicable rules and forms as in effect on the initial filing date of such registration statement and prospectus.

(b) If an amendment to a registration statement and prospectus is filed for the purpose of meeting the requirements of section 10(a)(3) of the Act or pursuant to the provisions of section 24(e) or 24(f) of the Investment Company Act of 1940, the form and contents of such an amendment shall conform to the applicable rules and forms as in effect on the filing date of such amendment.

(c) The form and contents of an amendment to a registration statement and prospectus other than an amendment described in paragraph (b) of this section shall conform to the applicable rules and forms as in effect on the filing date of the latest amendment described in paragraph (b) of this section or, if no such amendment has been filed, on the initial filing date of the registration statement and prospectus.

(d) The form and contents of a prospectus forming part of a registration statement which is the subject of a stop order entered under section 8(d) of the Act, if used after the date such stop order ceases to be effective, shall conform to the applicable rules and forms as in effect on the date such stop order ceases to be effective.

(e) A prospectus filed as part of an amendment to an effective registration statement on any form may be prepared in accordance with the requirements of any other form which would then be appropriate for the registration of securities to which the prospectus relates, provided that all of the other requirements of such other form and applicable rules (including any required undertakings) are met.

(f) Notwithstanding the provisions of this section, a registrant (1) shall comply with the rules and forms as in effect at a date different from those specified in paragraphs (a), (b), (c) and (d) of this section if the rules or forms or amendments thereto specifically so provide; and (2) may comply voluntarily with the rules and forms as in effect at dates subsequent to those specified in paragraphs (a), (b), (c) and (d) of this section, provided that all of the requirements of the particular rules and forms in effect at such dates (including any required undertakings) are met.

(g) A registration statement or any amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date or unless the Commission specifically notifies the registrant that no presumption may be made as to the appropriateness of the form.

§ 230.402 Number of copies; binding; signatures.

(a) Three copies of the complete registration statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Commission. Each copy shall be bound, 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. At least one such copy of every registration shall be manually signed by the persons specified in section 6(a) of the Act. Unsigned copies shall be conformed.

(b) Ten additional copies of the registration statement, similarly bound, shall be furnished for use in the examination of the registration statement, public inspection, copying and other purposes. Where a registration statement incorporates into the prospectus documents which are required to be delivered with the prospectus in lieu of prospectus presentation, the ten additional copies of the registration statement shall be accompanied by copies of such documents. No other exhibits are required to accompany such additional copies.

§ 230.403 Requirements as to paper, printing and language.

(a) Registration statements, applications and reports shall be filed on good quality, unglazed, white paper approximately 8½ by 11 inches or approximately 8½ by 13 inches in size, insofar as practicable. However, tables, charts, maps, and financial statements may be on larger paper if folded to that size, and the prospectus may be on smaller paper if the registrant so desires.

(b) The registration statement and, insofar as practicable, all papers and documents filed as a part thereof shall be printed, lithographed, mimeographed or typewritten. However, the statement or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designate so as to be clearly distinguisable as such on photocopies.

(c) The registration statement proper shall be in the English language. If any exhibit or other paper or document filed with the registration statement is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

(d) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports or other documents filed under the Act 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 this document.

§ 230.404 Preparation of registration statement.

(a) A registration statement shall consist of the facing sheet of the applicable form; cross reference sheet; a prospectus containing the information called for by Part I of such form; the information, list of exhibits, undertakings and signatures required to be set forth in Part II of such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

(b) All general instructions, instructions to items of the form, and instructions as to financial statements, exhibits, or prospectuses are to be omitted from the registration statement in all cases.

(c) The prospectus shall contain the information called for by all of the items of Part I of the applicable form, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item in Part I may be omitted. A copy of the prospectus may be filed as a part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever a copy of the prospectus is filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from the prospectus, except to the extent provided in paragraph (d) of this rule.

(d) Where any items of a form call for information not required to be included in the prospectus, generally Part II of such form, the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with the

prospectus under cover of the facing sheet of the form as a part of the registration statement. However, the text of such items may be omitted provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in the prospectus shall also be filed as a part of the registration statement proper, unless incorporated by reference pursuant to Rule 411 (17 CFR 230.411). If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

§ 230.405 Definitions of terms.

Unless the context otherwise requires, all terms used in §§ 230.400 to 230.494, inclusive, or in the forms for registration have the same meanings as in the Act and in the general rules and regulations. In addition, the following definitions apply, unless the context otherwise requires:

(a) *Affiliate.* An "affiliate" of, or person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(b) *Amount.* The term "amount," when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(c) *Associate.* The term "associate," when used to indicate a relationship with any person, means (1) a corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial benefical interest or as to which such person serves as trustee or in a similar capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(d) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

(e) *Charter.* The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, affecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(f) *Commission.* The term "Commission" means the Securities and Exchange Commission.

(g) *Control.* The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(h) *Director.* The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(i) *Dividend or interest reinvestment plan.* The term "dividend or interest reinvestment plan" means a plan which is offered solely to the existing security holders of the registrant, which allows such persons to reinvest dividends or interest paid to them on securities issued by the registrant, and also may allow additional cash amounts to be contributed by the participants in the plan, provided the securities to be registered are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(j) *Employee.* The term "employee" does not include a director, trustee, or officer.

(k) *Employee benefit plan.* The term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or pension plan solely for employees, directors, trustees or officers.

(l) *Equity security.* The term "equity security" means any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(m) *Executive officer.* The term "executive officer," when used with reference to a registrant, means its president, secretary or treasurer, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance) or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

(n) *Fiscal year.* The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(o) *Foreign government.* The term "foreign government" means the government of any foreign country, of any political subdivision of a foreign country or of any community or multi-national organization of foreign countries.

(p) *Foreign issuer.* The term "foreign issuer" means any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

(q) *Foreign private issuer.* The term "foreign private issuer" means any foreign issuer other than a foreign government.

(r) *Majority-owned subsidiary.* The term "majority-owned subsidiary" means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

(s) *Material.* The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.

(t) *North American issuer.* The term "North American issuer" means any foreign private issuer incorporated or organized under the laws of Canada or

Mexico or any political subdivision therpof.

(u) *Officer.* The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(v) *Parent.* A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

(w) *Predecessor.* The term "predecessor" means a person the major portion of the business and assets of which another person acquired in a single succession, or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

(x) *Principal underwriter.* The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter, the term "issuer" having the meaning given in sections 2(4) and 2(11) of the Act.

(y) *Promoter.* (1) The term "promoter" includes—

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer;

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (y)(1) of this section may be referred to as "founders" or "organizers" or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

(z) *Prospectus.* Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of section 10(a) of the Act.

(aa) *Registrant.* The term "registrant" means the issuer of the securities for which the registration statement is filed.

(bb) *Share.* The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

(cc) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary meeting any one of the following conditions.

(1) The assets of the subsidiary, or the investments in and advances, to the subsidiary by its parent and the parent's other subsidiaries, if any, exceed 10 percent of the assets of the parent and its subsidiaries on a consolidated basis.

(2) The sales and operating revenues of the subsidiary exceed 10 percent of the sales and operating revenues of its parent and the parent's subsidiaries on a consolidated basis.

(3) The subsidiary is the parent of one or more subsidiaries and together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

(dd) *Subsidiary.* A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also "majority owned subsidiary," "significant subsidiary," "totally held subsidiary," and "wholly owned subsidiary.")

(ee) *Succession.* The term "succession" means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms "succeed" and "successor" have meanings correlative to the foregoing.

(ff) *Totally held subsidiary.* The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

(gg) *Voting securities.* The term "voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

(hh) *Wholly owned subsidiary.* The term "wholly owned subsidiary" means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

§ 230.406 Title of Securities. [Removed]

§ 230.406y Title of securities.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and, if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1950 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 230.407 Interpretation of requirements. [Removed]

§ 230.411 Incorporation by reference.

(a) *Prospectus.* Unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus.

(b) *Information not required in a prospectus.* Except for exhibits covered by Rule 447 (17 CFR 230.447), information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be

incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;

(3) Information contained in any part of the registration statement, including the prospectus, may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in the prospectus; and

(4) Unless the information is incorporated by reference to a document which complies with the time limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24), then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) *General.* Any incorporation by reference of information pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) restricting incorporation by reference of documents which incorporate by reference other information. Information incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. If the information is incorporated by reference to a previously filed document, the file number of such document shall be included. Where only certain pages of a document are incorporated by reference and filed with the statement, the document from which the information is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement where the information is required. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear and confusing.

§ 230.412 Form of and limitation upon incorporation by reference. [Removed]

§ 230.412 Effective date of documents incorporated by reference.

For purposes of determining pursuant to section 11(a) of the Act only when a document incorporated by reference "became effective," the effective date shall be the date of the document's initial filing with the Commission. For all other purposes under the Act, including section 13, the effective date shall be the effective date of the registration statement.

§ 230.413 Registration of additional securities.

Except as provided in Sections 24(e)(1) and 24(f) of the Investment Company Act of 1940, the registration of additional securities of the same class as other securities for which a registration statement is already in effect shall be effected through a separate registration statement relating to the additional securities.

§ 230.414 Registration by certain successor issuers.

If any issuer, except a foreign issuer exempted by Rule 3a12–3 (17 CFR 240.3a12–3), incorporated under the laws of any State or foreign government and having securities registered under the Act has been succeeded by an issuer incorporated under the laws of another State or foreign government for the purpose of changing the State or country of incorporation of the enterprises, the registration statement of the predecessor issuer shall be deemed the registration statement of the successor issuer for the purpose of continuing the offering provided—

(a) Immediately prior to the succession the successor issuer had no assets or liabilities other than nominal assets or liabilities;

(b) The succession was effected by a merger or similar succession pursuant to statutory provisions or the terms of the organic instruments under which the successor issuer acquired all of the assets and assumed all of the liabilities and obligations of the predecessor issuer;

(c) The succession was approved by security holders of the predecessor issuer at a meeting for which proxies were solicited pursuant to section 14(a) of the Securities Exchange Act of 1934 or section 20(a) of the Investment Comany Act of 1940 or information was furnished to security holders pursuant to section 14(c) of the Securities Exchange Act of 1934; and

(d) The successor issuer has filed an amendment to the registration statement of the predecessor issuer expressly adopting such statements as its own registration statement for all purposes of the Act and the Securities Exchange Act of 1934 and setting forth any additional information necessary to reflect any material changes made in connection with or resulting from the succession, or necessary to keep the registration statement from being misleading in any material respect, and such amendment has become effective.

§ 230.415 Competitive bidding registration statement.

(a) Any order declaring a registration statement, covering securities to be offered at competitive bidding, effective shall be deemed to declare an amendment thereto, filed to reflect the results of the bidding, the terms of the reoffering and related materials, effective in accordance with paragraph (b) of this rule.

(b) An amendment to such a registration statement filed to reflect the results of the bidding, the terms of the reoffering and related materials (which may make such other changes in the registration statement as the registrant deems appropriate) shall become effective at the time such amendment is filed with the Commission at its principal office or any regional or branch office, unless the Commission has notified the registrant that it has instituted proceedings under section 8 of the Act. The amendment shall be accompanied by the consent of a managing underwriter, acting on behalf of all principal underwriters of the securities offered at competitive bidding, to the filing thereof.

(c) A prospectus relating to the securities offered at competitive bidding, when used prior to the opening of bids, need not contain information dependent upon the determination of the offering price of such securities or the acceptance of the bid, in order to meet the requirements of section 10(a) of the Act. A prospectus relating to such securities, when used after the opening of bids, shall not be deemed to meet the requirements of section 10(a) of the Act unless (1) an amendment to the registration statement has been filed to reflect the results of the bidding, the terms of the reoffering and related material, if required, and (2) such prospectus reflects the information contained in the registration statement, as amended, to the extent required by the applicable form.

(d) A registrant may register securities to be offered at competitive bidding and securities not to be so offered pursuant to a single joint registration statement only if all information (including offering data, etc.) required by the applicable form with respect to the securities not to be so offered is included in the registration statement prior to the initial effectiveness thereof. If such information is not so included, the Commission will not accelerate such effectiveness unless an amendment to the registration statement is first filed so as to make it cover only the securities to be offered at cometitive bidding. The registrant may, however, either initially or after such amendment, register the securities not to be offered at competitive bidding pursuant to a separate registration statement. An appropriate composite form of prospectus may in any event be used for all securities registered.

§ 230.418 Modified or superseded documents

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the registration statement or the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purpose of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

§ 230.419 Supplemental information.

(a) The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, the registration statement, the distribution of the securities, market activities and underwriters' activities. Such information includes, but is not limited to, the following items which the registrant should be prepared to furnish promptly upon request:

(1)(i) Any reports or memoranda which have been prepared for external use by the registrant or a principal underwriter, as defined in Rule 405 (17 CFR 230.405), in connection with the proposed offering, or if no such reports or memoranda have been prepared, a statement so indicating;

(ii) A statement as to the actual or proposed use and distribution of the reports or memoranda specified in paragraph (a)(1)(i) of this section, identifying each class of persons who have received or will receive such reports or memoranda and the number of copies distributed to each such class;

(2) In the case of a registration statement relating to a business combination as defined in Rule 145(a) (17 CFR 230.145(a)), exchange offer, tender offer or similar transaction, any feasibility studies, management analyses, fairness opinions or similar reports prepared by or for any of the parties to the subject transaction in connection with such transaction;

(3) Except in the case of a registrant eligible to use Form S–2 (17 CFR 239.12), any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or products of the registrant, which have been prepared within the past twelve months for or by the registrant, any affiliate of the registrant or any principal underwriter, as defined in Rule 405 (17 CFR 230.405), of the securities being registered except for:

(i) Reports solely comprised of recommendations to buy, sell or hold the securities of the registrant, unless such recommendations have changed within the past six months; and

(ii) Any information contained in documents already filed with the Commission.

(4) Where a registrant has not previously been required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, immediately prior to filing, or where the registrant is required in the prospectus to include reference to material risks pursuant to Item 501(d) of Regulation S–K information relating to the due diligence inquiry of the underwriters;

(5) Where there is a registration of an "offering at the market," as defined in Rule 10b–7 under the Securities Exchange Act of 1934 (17 CFR 240.10b–7), of a substantial amount of securities in relation to the securities outstanding (more than 10 percent), where the offering includes securities owned by officers, directors or affiliates of the registrant and where there is no underwriting agreement, information (i) concerning contractual arrangements between selling security holders of a limited group or of several groups of related shareholders to comply with the anti-manipulation rules until the offering by all members of the group is completed and to inform the exchange, brokers and selling security holders when the distribution by the members of the group is over; or (ii) concerning the registrant's efforts to notify members of a large group of unrelated sellers of the applicable Commission rules and regulations;

(6) Where the registrant recently has introduced a new product or has begun to do business in a new industry segment or has made public its intentions to introduce a new product or to do business in a new industry segment, and this action requires the investment of a material amount of the assets of the registrant or otherwise is material, copies of any studies prepared for the registrant by outside persons or any internal studies, documents, reports or memoranda the contents of which were material to the decision to develop the product or to do business in the new segment including, but not limited to, documents relating to financial requirements and engineering, competitive, environmental and other considerations, but excluding technical documents;

(7) Where reserve estimates are referred to in a document, a copy of the full report of the engineer or other expert who estimated the reserves; and

(8) With respect to the extent of the distribution of a preliminary prospectus, information concerning:

(i) The date of the preliminary prospectus distributed;

(ii) The dates or approximate dates of distribution;

(iii) The number of prospective underwriters and dealers to whom the preliminary prospectus was furnished;

(iv) The number of prospectuses so distributed;

(v) The number of prospectuses distributed to others, identifying them in general terms; and

(vi) The steps taken by such underwriters and dealers to comply with the provisions of Rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8).

(b) Supplemental information described in paragraph (a) of this section shall not be required to be filed with or deemed part of the registration statement. The information shall be returned to the registrant upon request, provided that:

(1) Such request is made at the time such information is furnished to the staff;

(2) The return of such information is consistent with the protection of investors; and

(3) The return of such information is consistent with the provisions of the Freedom of Information Act [5 U.S.C. 552].

Form and Contents of Prespectuses

§ 230.421 Presentation of information in prospectuses.

(a) The information required in a prospectus need not follow the order of

the items or other requirements in the form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in a prospectus in tabular form it shall be given in substantially the tabular form specified in the item.

(b) The information set forth in a prospectus should be presented in a clear, concise and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections.

(c) All information required to be included in a prospectus shall be clearly understandable without the necessity of referring to the particular form or to the general rules and regulations. Except as to financial statements and information required in a tabular form, the information set forth in a prospectus may be expressed in condensed or summarized form. In lieu of repeating information in the form of notes to financial statements, references may be made to other parts of the prospectus where such information is set forth.

§ 230.422 Summaries or outlines of documents. [Removed]

§ 230.425 Statement required in all prospectuses. [Removed]

§ 230.425a Statement required on prospectus regarding delivery of prospectuses. [Removed]

§ 230.426 Statement as to stabilizing. [Removed]

§ 230.425y Information required in prospectus.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, the following provisions apply:

(a) The facing page of every registration statement shall set forth the approximate date or proposed sale to the public. Every registration statement shall include, immediately following the facing page, a cross reference sheet showing the location in the prospectus of the information required to be included in the prospectus in response to the items of the form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted from the prospectus, a statement to that effect shall be made in the cross reference sheet.

(b) The outside front cover page of any prospectus relating to such registration statement shall contain:

(1) The following statement in capital letters printed in holdface roman type at least as large as ten-point modern type and at least two points leaded:

"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;" and

(2) In the case of any prospectus to be used prior to the effective date of the registration statement, in red ink, the caption "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body of such prospectus:

"A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. 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."

(c) The forepart of any prospectus relating to such registration statement shall include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins.

(d) The inside front cover page of any prospectus relating to such registration statement shall contain:

(1) If the registrant or any of the underwriters knows or has reason to believe that there is an intention to over allot or that the price of any security may be stabilized to facilitate the offering of the registered securities, a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in hold-face roman type at least as large as ten-point modern type and at least two points leaded:

"IN CONNECTION WITH THIS OFFERING, THE UNDERWRITING MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILZE OR MAINTAIN THE MARKET PRICE OF [identify each class of securities in which such transactions may be effected] AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON [identify each change on which stabilizing transactions may be effected. If none, omit this sentence.] SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME;" and

(2) If the stabilizing began prior to the effective date of the registration statement, disclosure of the amount of securities bought, the prices at which bought and the period within which they were bought.

(e) if the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after expiration of the rights offering period, there shall be set forth on the inside front cover, or elsewhere, in the prospectus used in connection with the reoffering

(1) The amount of securities bought in stabilization activities during the rights offering period and the price, or range of prices, at which such securities were bought,

(2) The amount of the offered securities subscribed for during such period,

(3) The amount of the offered securities subscribed for by the underwriters during such period,

(4) The amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold, and

(5) The amount of the offered securities to be reoffered to the public and the public offering price.

(f)(1) The inside front cover page or the back cover page of any prospectus relating to such registration statement shall contain the statement in paragraph (f)(2) of this section, inserting the expiration date of the period prescribed by section 4(3) of the Act and Rule 174 (17 CFR 230.174) thereunder; except that this statement need not be included if, pursuant to Rule 174, dealers are not required to deliver a prospectus, or if the exemption provided by section 4(3) of

the Act is not applicable because of the provisions of section 24(d) of the Investment Company Act of 1940. If such expiration date is not known on the effective date of the registration statement, it shall be included in the prospectus copies of which are required to be filed pursuant to Rule 424(b) (17 CFR 230.424(b)).

(2) The following statement required by paragraph (f)(1) of this section shall be printed in boldface type or italic type at least as large as eight point modern type and at least two points leaded:

Until———(insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

§ 230.427 Contents of prospectus used after nine months.

There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial statement, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

§ 230.428 Invitations for competitive bids.

Any information or documents contained in a registration statement may be omitted from any communication which is only an invitation for competitive bids for securities with respect to which a registration statement has been filed, provided (a) the terms of the bidding require that each bid shall be for the purchase of the entire amount of one or more of the issues; and (b) the communication states that prior to the acceptance of any bid the bidder will be furnished a copy of a prospectus which meets the requirements of section 10(a) of the Act at that time.

§ 230.430 Prospectuses of employees' savings, profit sharing or pension plans. [Removed]

§ 230.431 Prospectuses supplementing preliminary material supplied previously. [Removed]

§ 230.432 Application of amendments to rules governing contents of prospectus. [Removed]

§ 230.433 Prospectus for use prior to effective date.

A form of prospectus filed as a part of the registration statement shall be deemed to meet the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof prior to the effective date of the registration statement, provided such form of prospectus contains substantially the information required by the Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of section 10(a) of the Act for the securities being registered, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. Every such form of prospectus shall be deemed to have been filed as a part of the registration statement for the purpose of section 7 of the Act.

§ 230.434 Summary prospectus prepared by independent organizations. [Removed]

§ 230.434a Summary prospectuses.

(a) A summary prospectus prepared and filed as a part of a registration statement in accordance with this rule shall be deemed to be a prospectus permitted under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if the form used for registration of the securities to be offered provides for the use of a summary prospectus and, if the issuer is not a registered open-end investment company, the following conditions are met:

(1) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories;

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 or has a class of equity securities registered pursuant to section 12(g) of that Act or is required to file reports pursuant to section 15(d) of that Act;

(3) The registrant: (i) has been subject to the requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of that Act for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement; and (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Securities Exchange Act of 1934 with respect to a report or portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries has, since the end of its last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934: (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted on any installment or installments on indebtedness for borrowed money, or on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(b) A summary prospectus shall contain the information specified in the instructions as to summary prospectuses in the form used for registration of the securities to be offered. Such prospectus may include any other information the substance of which is contained in the registration statement except as otherwise specifically provided in the instructions as to summary prospectuses in the form used for registration. It shall not include any information the substance of which is not contained in the registration statement except that a summary prospectus may contain any information specified in Rule 134(a) (17 CFR 230.134(a)). No reference need be made to inapplicable terms and negative answers to any item of the form may be omitted.

(c) All information included in a summary prospectus, other than the statements specified below, may be expressed in such condensed or summarized form as may be appropriate in the light of the circumstances under which the prospectus is to be used. The information need not follow the numerical sequence of the items of the form used for registration. Every summary prospectus shall be dated approximately as of the date of its first use.

(d) When used prior to the effective date of the registration statement, a summary prospectus shall be captioned a "Preliminary Summary Prospectus" and shall comply with the applicable requirements relating to a preliminary prospectus.

(e) A statement to the following effect shall be prominently set forth in

conspicuous print at the beginning or at the end of every summary prospectus:

"Copies of a more complete prospectus may be obtained from" (Insert name(s), address(es) and telephone number(s)).

Copies of a summary prospectus filed with the Commission pursuant to paragraph (g) of this section may omit the names of persons from whom the complete prospectus may be obtained.

(f) The summary prospectus may be printed, mimeographed, typewritten or prepared by any other process which will result in clearly legible copies. If printed, it shall be set in roman type at least as large as 10-point modern type with a leading of at least 2 points, provided that financial or other tabular data need only be set in type at least as large as 8-point modern type with a leading of at least 2 points. Any summary prospectus published in a newspaper, magazine or other periodical need only be set in type at least as large as 7 point modern type. Nothing in this rule shall prevent the use of reprints of a summary prospectus published in a newspaper, magazine, or other periodical, if such reprints are clearly legible.

(g) Eight copies of every proposed summary prospectus shall be filed with the registration statement as a part thereof, or as an amendment thereto at least 5 days (exclusive of Saturdays, Sundays and holidays) prior to the use thereof, or prior to the release for publication by any newspaper, magazine or other person, whichever is earlier. The Commission may, however, in its discretion, authorize such use or publication prior to the expiration of the 5-day period upon a written request for such authorization. Within 7 days after the first use or publication thereof, 5 additional copies shall be filed in the exact form in which it was used or published.

§ 230.434c Use of foreign language prospectus in a foreign country.

(a) A prospectus required by the laws of a foreign government to be used for the offer or sale in a foreign country of securities which are also registered under the Act shall be deemed to meet the requirements of section 10(a) of the Act when such offers or sales in such foreign country are to persons who are not nationals or residents of (including corporations, trusts, partnership created or organized in) the United States, provided that, such foreign language prospectus contains substantially the information required in the prospectus filed as part of the registration statement under the Act notwithstanding that such foreign language prospectus (1) contains certain additional information, and (2) differs in form from the United States prospectus.

(b) Three copies of an English translation of a foreign language prospectus described in paragraph (a) of this section shall be filed with the Commission within 20 days after its use. If such foreign language prospectus is amended, three copies of an English translation of such prospectus as last amended prior to the close of an issuer's fiscal year shall be filed with the Commission with 20 days after the close of such year.

§ 230.434d Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisment, other than one excepted from the definition of prospectus by section 2(10) of the Act and rule 134 thereunder, shall be deemed to be a prospectus under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if

(1) It is with respect to an investment company registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act,

(2) It appears in a bona fide newspaper or magazine or is used on radio or television,

(3) It contains only information the substance of which is included in the section 10(a) prospectus,

(4) It states, conspicuously, from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing, and

(5) It contains the statement required by Rule 425y(a)(2) when used prior to effectiveness of the company's registration statement.

(b) An advertisement made pursuant to paragraph (a) of this section need not contain the statement required by § 230.425y(a)(1).

(c) An advertisement made pursuant to paragraph (a) of this section need not be filed as part of the registration statement filed under the Act.

Note.—Such advertisement must, however, be otherwise filed in accordance with the requirements of Rule 424 (17 CFR 230.424).

(d) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement is based on the method of computation prescribed in Item 17 (and the instructions thereto) of Form N-1, set forth in §§ 239.15 and 274.11 of this chapter, and identifies [the date of the last day in] the period used in computing that quotation.

Written Consents

§ 230.435 Formal requirements as to consents. [Removed]

§ 230.436 Consents required in special cases.

(a) If any portion of the report or opinion of an expert or counsel is quoted or summarized as such in the registration statement or in a prospectus the written consent of the expert or counsel shall be filed as an exhibit to the registration statement and shall expressly state that the expert or counsel consents to such quotation or summarization.

(b) If it is stated that any information contained in the registration statement has been reviewed or passed upon by any persons and that such information is set forth in the registration statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed as exhibits to the registration statement.

(c) Notwithstanding the provisions of paragraph (b) of this section, a report on unaudited interim financial information (as defined in paragraph (d) of this section) by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term "report on unaudited interim financial information" shall mean a report which consists of the following: (1) a statement that the review of interim financial information was made in accordance with established professional standards for such reviews; (2) an identification of the interim financial information reviewed; (3) a description of the procedures for a review of interim financial information; (4) a statement that a review of interim financial information is substantially less in scope that an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and (5) a statement about whether the accountant is aware of any material modifications

that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

(e) Where a counsel is named as having acted for the underwriters or selling security holders, no consent will be required by reason of his being named as having acted in such capacity.

(f) Where the opinion of one counsel relies upon the opinion of another counsel, the consent of the counsel whose prepared opinion is relied upon need not be furnished.

(g)(1) Notwithstanding the provisions of paragraph (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, or a clsss of preferred stock by a nationally recognized statistical rating organization shall not be considered a part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

(2) For the purpose of paragraph (g)(1) of this section, the term "nationally recognized statistical rating organization" shall have the same meaning as used in Rule 15c3–1(c)(2)(vi)(E) [17 CFR 240.15c3–1 (c)(2)(vi)(E)].

§ 230.439 Consent to use of material incorporated by reference.

If the Act or the rules and regulations of the Commission require the filing of a written consent to the use of any material in connection with the registration statement, such consent shall be filed as an exhibit to the registration statement even though the material is incorporated therein by reference. Where the filing of a written consent is required with respect to material incorporated in the registration statement by reference, which is to be filed subsequent to the effective date of the registration statement, such consent shall be filed as an amendment to the registration statement no later than the date on which such material is filed with the Commission, unless express consent to incorporation by reference is contained in the material to be incorporated by reference.

Exhibits

§ 230.445 Additional exhibits. [Removed]

§ 230.446 Omission of substantially identical documents. [Removed]

§ 230.445y Exhibits for certain registration statements.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, the following provisions apply:

(a) Such registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The exhibit index shall indicate by handwritten, typed, printed or other legible form of notation in the manually signed original registration statement the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

(b) If any name is signed to the registration statement pursuant to a power of attorney, copies of such powers of attorney shall be filed as an exhibit to the registration statement. In addition, if the name of any officer signing on behalf of the registrant, or attesting the registrant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed as an exhibit to the registration statement.

(c) All written consents are required to be filed as an exhibit to the registration statement, together with a list thereof. Such consents shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion, a reference shall be made in the list to the report or opinion containing the consent.

(d) The registrant

(1) May file such exhibits as it may desire in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer;

(2) In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted; and

(3) If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (i) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commission, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement, or (ii) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by this rule for not refiling such exhibit. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

§ 230.447 Incorporation of exhibits by reference.

(a) Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24), be incorporated by reference as an exhibit to any registration statement.

(b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

Filings; Fees; Effective date

§ 230.457 Computation of fee.

(a) If a filing fee based on a bona fide estimate of the maximum offering price, computed in accordance with this rule where applicable, has been paid, no additional filing fee shall be required as a result of changes in the proposed offering price. If the number of shares or other units of securities, or the principal amont of debt securities to be offered is increased by an amendment filed prior to the effective date of the registration statement, an additional filing fee, computed on the basis of the offering price of the additional securities, shall be paid. There will be no refund once the statement is filed.

(b) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price at which securities of the same class were sold, or upon the

average of the bid and asked prices of such securities on a specified date within fifteen days prior to the date of filing of the registration statement.

(c) Where securities are to be offered at varying prices based upon fluctuating values of underlying assets, the registration fee is to be calculated upon the basis of the market value of such assets as of a specified date within fifteen days prior to the date of filing, in accordance with the method to be used in calculating the daily offering price.

(d) Where securities are to be offered to existing security holders and the portion, if any, not taken by such security holders is to be reoffered to the general public, the registration fee is to be calculated upon the basis of the proposed offering price to such security holders or the proposed reoffering price to the general public, whichever is higher.

(e) Where securities are to be offered in exchange for other securities (except where such exchange results from the exercise of a conversion privilege) or in a reclassification or recapitalization which involves the substitution of a security for another security, merger, consolidation, or similar plan of acquisition, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities to be received by the registrant or cancelled in the exchange or transaction as established by the price at which securities of the same class were sold, or by the average of the bid and asked prices of such security as of a specified date within 15 days prior to the date of filing.

(2) If there is no market for the securities to be received by the registrant or cancelled in the exchange or transaction, 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, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash is to be received by the registrant in connection with the exchange or transaction, 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 (e) (1) or (2) of this section. If any cash is to be paid by the registrant in connection with the exchange or transaction, 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 (e) (1) or (2) of this section.

(4) Securities to be offered directly or indirectly for certificates of deposit shall be deemed to be offered for the securities represented by the certificates of deposit.

(f) Where securities are to be offered pursuant to warrants or other rights to purchase such securities and the holders of such warrants or rights may be deemed to be underwriters, as defined in section 2(11) of the Act, with respect to the warrants or rights or the securities subject thereto, the registration fee is to be calculated upon the basis of the price at which the warrants or rights or securities subject thereto are to be offered to the public. If such offering price cannot be determined at the time of filing the registration statement, the registration fee is to be calculated upon the basis of the highest of the following: (1) the price at which the warrants or rights may be exercised, if known at the time of filing the registration statement; (2) the offering price of securities of the same class included in the registration statement; or (3) the price at which securities of the same class were sold, or the average of the bid and asked prices of such securities, on a specified date within 15 days prior to the date of filing the registration statement. If the fee is to be calculated upon the basis of the price at which the warrants or 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. If the warrants or rights are to be registered for distribution in the same registration statement as the securities to be offered pursuant thereto, no separate registration fee shall be required.

(g) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price at which stock of the same class was sold, or the average of the bid and asked prices of such stock, on a specified date within 15 days prior to the date of filing the registration statement. Where securities are to be offered to employees pursuant to a bonus plan or similar non-contributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price at which such securities of the same class were sold, or the average bid and asked prices of such securities, on a specified date within 15 days prior to the date of filing the registration statement. If there is no market for the securities to be offered, 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.

(h) Where convertible securities and the securities into which conversion is offered are registered at the same time, the registration fee is to be calculated on the basis of the proposed offering price of the convertible securities alone, except that if any additional consideration is to be received in connection with the exercise of the conversion privilege the maximum amount which may be received shall be added to the proposed offering price of the convertible securities.

(i) Where securities are sold prior to the registration thereof and are subsequently registered for the purpose of making an offer of rescission of such sale or sales, the registration fee is to be calculated on the basis of the amount at which such securities were sold, except that where securities repurchased pursuant to such offer of rescission are to be reoffered to the general public at a price in excess of such amount the registration fee is to be calculated on the basis of the proposed reoffering price.

(j) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of American Depositary Receipts registered on Form S–12 (17 CFR 239.19) shall, for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed in connection with the issuance of such receipts.

(k) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of any put or call option which is traded on a national securities exchange and registered by such exchange or a facility thereof shall, for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed by such registrant in connection with the issuance of such option.

(l) Notwithstanding the other provisions of this rule, where the

securities to be registered include (1) any note, draft, bill of exchange, or bankers' acceptance which meets all the conditions of section 3(a)(3) hereof, and (2) any note, draft, bill of exchange or bankers' acceptance which has a maturity at the time of issuance of not exceeding nine months exclusive of days of grace, or any renewal thereof the maturity date of which is likewise limited, but which otherwise does not meet the conditions of section 3(a)(3), the registration fee shall be calculated by taking one-fiftieth of 1 per centum of the maximum principal amount of only those securities not meeting the conditions of section 3(a)(3).

(m) Where the securities to be offered are guarantees of other securities which are being registered concurrently, no separate fee for the guarantees shall be payable.

§ 230.460 Distribution of preliminary prospectus.

(a) Pursuant to the statutory requirement that the Commission in ruling upon requests for acceleration of the effective date of a registration statement shall have due regard to the adequacy of the information respecting the issuer theretofore available to the public, the Commission may consider whether the persons making the offering have taken reasonable steps to make the information contained in the registration statement conveniently available to underwriters and dealers who it is reasonably anticipated will be invited to participate in the distribution of the security to be offered or sold.

(b) As a minimum, reasonable steps to make the information conveniently available would involve the distribution, to each underwriter and dealer who it is reasonably anticipated will be invited to participate in the distribution of the security, a reasonable time in advance of the anticipated effective date of the registration statement, of as many copies of the proposed form of preliminary prospectus permitted by Rule 433 (17 CFR § 230.433) as appears to be reasonable to secure adequate distribution of the preliminary prospectus.

(c) The granting of acceleration will not be conditioned upon

(1) The distribution of a preliminary prospectus in any state where such distribution would be illegal; or

(2) The distribution of a preliminary prospectus (i) in the case of a registration statement relating solely to securities to be offered at competitive bidding, provided the undertaking in Item 512(d)(2) of Regulation S–K is included in the registration statement and distribution of prospectuses pursuant to such undertaking is made prior to the publication or distribution of the invitation for bids, or (ii) in the case of a registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold, pursuant to an effective registration statement by the issuer or by or through an underwriter, or, (iii) in the case of an offering of subscription rights unless it is contemplated that the distribution will be made through dealers and the underwriters intend to make the offering during the stockholders' subscription period, in which case copies of the preliminary prospectus must be distributed to dealers prior to the effective date of the registration statement in the same fashion as is required in the case of other offerings through underwriters, or (iv) in the case of a registration statement pertaining to a security to be offered pursuant to an exchange offer or transaction described in Rule 145 (17 CFR 230.145).

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made in writing by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. If, by reason of the expected arrangement in connection with the offering, it is to be requested that the registration statement shall become effective at a particular hour of the day, the Commission must be advised to that effect not later than the second business day before the day which it is desired that the registration statement shall become effective. A person's request for acceleration will be considered confirmation of such person's awareness of the person's obligations under the Act. Not later than the time of filing the last amendment prior to the effective date of the registration statement, the registrant shall inform the Commission as to whether or not the amount of compensation to be allowed or paid to the underwriters and any other arrangements among the registrant, the underwriters and other broker dealers participating in the distribution, as described in the registration statement, have been reviewed to the extent required by the National Association of Securities Dealers, Inc. and such Association has issued a statement expressing no objections to the compensation and other arrangements.

(b) Having due regard to the adequacy of information respecting the registrant theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the registrant issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors, as provided in section 8(a) of the Act, it is the general policy of the Commission, upon request, as provided in paragraph (a) of this section, to permit acceleration of the effective date of the registration statement as soon as possible after the filing of appropriate amendments, if any. In determining the date on which a registration statement shall become effective, the following are included in the situations in which the Commission considers that the statutory standards of section 8(a) may not be met and may refuse to accelerate the effective date:

(1) Where there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus.

(2) Where the form of preliminary prospectus, which has been distributed by the issuer or underwriter, is found to be inaccurate or inadequate in any material respect, until the Commission has received satisfactory assurance that appropriate correcting material has been sent to all underwriters and dealers who received such preliminary prospectus or prospectuses in quantity sufficient for their information and the information of others to whom the inaccurate or inadequate material was sent.

(3) Where the Commission is currently making an investigation of the issuer, a person controlling the issuer, or one of the underwriters, if any, of the securities to be offered, pursuant to any of the Acts administered by the Commission.

(4) Where one or more of the underwriters, although firmly committed to purchase securities covered by the registration statement, is subject to and does not meet the financial responsibility requirements of Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934. For the purposes of this paragraph underwriters will be deemed to be firmly committed even though the obligation to purchase is subject to the usual conditions as to receipt of opinions of counsel, accountants, etc., the accuracy of warranties or representations, the happening of calamities or the

occurrence of other events the determination of which is not expressed to be in the sole or absolute discretion of the underwriters.

(5) Where there have been transactions in securities of the registrant by persons connected with or proposed to be connected with the offering which may have artificially affected or may artificially affect the market price of the security being offered.

(6) Where the amount of compensation to be allowed or paid to the underwriters and any other arrangements among the registrant, the underwriters and other broker dealers participating in the distribution, as described in the registration statement, if required to be reviewed by the National Association of Securities Dealers, Inc. (NASD), have been reviewed by the NASD and the NASD has not issued a statement expressing no objections to the compensation and other arrangements.

(7) Where, in the case of a significant secondary offering at the market, the registrant, selling security holders and underwriters have not taken sufficient measures to insure compliance with Rules 10b–2 (17 CFR 240.10b–2), 10b–6 (17 CFR 240.10b–6) and 10b–7 (17 CFR 240.10b–7) under the Securities Exchange Act of 1934.

(c) Insurance against liabilities arising under the Act, whether the cost of insurance is borne by the registrant, the insured or some other person, will not be considered a bar to acceleration, unless the registrant is a registered investment company, or a company that has elected to be regulated as a business development company under sections 55 through 65 of the Investment Company Act of 1940. In the case of such a registrant, the Commission may refuse to accelerate the effective date of the registration statement when the registrant is organized or administered pursuant to any instrument (including a contract for insurance against liabilities arising under the Act) that protects or purports to protect any director or officer of the company against any liability to the company or its security holders to which he or she would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

§ 230.461y Undertaking required in certain registration statements.

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, if (a) any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 (17 CFR 230.461), and (b)(1) any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Act, or (2) the underwriting agreement contains provisions by which indemnification against such liabilities is given by the registrant to the underwriter or controlling persons of the underwriter and the director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is an underwriter, and (3) the benefits of such indemnification are not waived by such persons; the registration statement shall include a brief description of the indemnification provisions and an undertaking in substantially the following form:

Insofar as indemnification for liability arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

§ 230.462 Notice of delayed or suspended offering and sale of securities. [Removed]

§ 230.462a Delayed or continuous offering and sale of securities.

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, provided that

(1) The registration statement pertains to:

(i) Securities in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration statement by or on behalf of the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary; or

(ii) Securities which are to be offered or sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary; or

(iii) Securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant; or

(iv) Securities which are to be issued upon the exercise of outstanding options, warrants or rights; or

(v) Securities which are to be issued upon conversion of other outstanding securities; or

(vi) Securities which are pledged as collateral; or

(viii) Securities which are registered on Form S–12 [17 CFR 239.19] or Form C–3 [17 CFR 239.5].

(2) The registrant furnishes the undertakings required by Item 512(a) of Regulation S–K.

(3) In the case of a registration statement pertaining to and at the market offering of equity securities by or on behalf of the registrant, the securities so registered must be sold through an underwriter or underwriters, acting as principal(s) or as agent(s) for the issuer, and the underwriter or underwriters must be named in the prospectus which is part of the registration statement. As used in this paragraph, the term "at the market offering" means an offering of securities into an existing trading market for outstanding shares of the same class at other than a fixed price on or through the facilities of a national securities exchange or to a market maker otherwise than on an exchange.

(b) This section shall not apply to any registration statement pertaining to securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

§ 230.464 Effective date of post-effective amendments on Form S–8 or on Form S–3 for registration statements relating to a dividend or interest reinvestment plan.

Provided, That the issuer continues to meet the requirements for filing on Form S–8 or on Form S–3 for a registration

statement relating to dividend or interest reinvestment plan at the time of filing of each post-effective amendment on such Form with the Commission:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of an S–8 registration statement or an S–3 registration statement relating to a dividend or interest reinvestment plan and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

§ 230.465 Effective date of post-effective amendments filed by certain registered investment companies.

(a) Except as otherwise provided in the section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) or the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)], shall become effective on the sixtieth day after the filing thereof, unless the Commission, having due regard to the public interest and the protection of investors, declares such amendment effective on an earlier date.

(b) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)], shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than twenty days after the date on which the amendment is filed, provided that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered pursuant to section 24(e)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(e)(1)];

(ii) Registering an indefinite number or amount of securities pursuant to section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(f)] and Rule 24f–2 thereunder [17 CFR 270.24f–2]; and

(iii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act, and in conjunction therewith, making such other non-material changes as the registrant deems appropriate;

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 [15 U.S.C. 80a–13], is changeable only by shareholder vote;

(iii) Suspension of sales or redemptions of securities issued by the registrant;

(iv) Resignation of any of the registrant's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the registrant's operations, policies or practices;

(v) A change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles or practices or financial statement disclosures; or

(vi) If registrant is a unit investment trust the assets of which do not consist solely of securities issued by a management investment company, any substitution by the depositor or trustee of the trust of securities held by the trust with a value of 5% or more of the trust's net assets; and

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of the following three dates: (i) the effective date of the registrant's registration statement; (ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective; and

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

(c) No amendment shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d)(1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to such prospectus, *Provided*, That such subsequent amendment is filed pursuant to paragraph (b) of this section, *And provided further*, That such subsequent amendment designates as its effective date the date on which the prior post-effective amendment shall become effective pursuant to paragraph (a) of this section. If another post-effective amendment relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, neither the prior amendment filed pursuant to paragraph (a) of this section or the amendment filed pursuant to paragraph (b) of this section shall become effective pursuant to this section.

(e) The representations of the registrant referred to in paragraphs

(b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be made by certification on the signature page of the posteffective amendment that such amendment meets all of the requirements for effectiveness pursuant to paragraph (b) of this section. If counsel prepared or reviewed the posteffective amendment filed pursuant to paragraph (b) of this section, such counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures which would render it ineligible to become effective pursuant to paragraph (b) of this section.

Amendments; Withdrawals

§ 230.470 Formal requirements for amendments.

Amendments to a registration statement 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.

§ 230.471 Signatures to amendments.

(a) Except as provided in paragraph (b) of this section and § 230.478, every amendment to a registration statement shall be signed by the persons specified in section 6(a) of the Act. At least one copy of every amendment filed with the Commission shall be signed. Unsigned copies shall be conformed.

(b) A registration statement filed in connection with the registration of securities to be offered at competitive bidding may expressly confer authorization upon the agent for service named in the registration statement to amend the registration statement in accordance with the undertaking to file an amendment to the registration statement reflecting the results of the bidding, the terms of the reoffering and related matters, not later than the first use, authorized by the registrant after the opening of bids. The authorization shall be substantially in the following form:

Each person whose signature appears below hereby authorizes the agent for service named in the registration statement to execute in the name of each such person, and to file, an amendment to the registration statement pursuant to the above undertaking, which amendment may make such other changes in the registration statement as the registrant deems appropriate.

§ 230.472 Filing of amendments; number of copies.

(a) Except for telegraphic amendments filed pursuant to § 230.473 of this chapter, there shall be filed with the Commission three complete, unmarked copies of every amendment, including exhibits and all other papers and documents filed as part of the amendment, and eight additional copies of such amendment at least five of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes effected in the registration statement by the amendment. Where the amendment to the registration statement incorporates into the prospectus documents which are required to be delivered with the prospectus in lieu of prospectus presentation, the eight additional copies shall be accompanied by copies of such documents. No other exhibits are required to accompany such additional copies.

(b) Every amendment which relates to a prospectus shall include copies of the prospectus as amended. Each such copy of the amended prospectus shall be accompanied by a copy of the cross reference sheet required by Item 501 of Regulation S–K or Rule 425y(a) if the amendment of the prospectus resulted in any change in the accuracy of the cross reference sheet previously filed. Notwithstanding the foregoing provisions of this paragraph, only copies of the changed pages of the prospectus, and the cross reference sheet if amended, need be included in an amendment filed pursuant to an undertaking referred to in Item 512(d) of Regulation S–K.

(c) Every amendment of a financial statement which is not included in the prospectus shall include copies of the financial statement as amended. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statement in the registration statement or prospectus and to being named as having certified such financial statement.

§ 230.473 Delaying amendments.

(a) An amendment in the following form filed with a registration statement, or as an amendment to a registration statement which has not become effective, shall be deemed, for the purpose of section 8(a) of the Act, to be filed on such date or dates as may be necessary to delay the effective date of such registration statement (1) until the registrant shall file a further amendment which specifically states as provided in paragraph (b) of this section that such registration statement shall thereafter become effective in accordance with section 8(a) of the Act, or (2) until the registration statement shall become effective on such date as the Commission, acting pursuant to section 8(a), may determine:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.

(b) An amendment which for the purpose of paragraph (a)(1) of this section specifically states that a registration statement shall thereafter become effective in accordance with section 8(a) of the Act, shall be in the following form:

This registration statement shall hereafter become effective in accordance with the provisions of section 8(a) of the Securities Act of 1933.

(c) An amendment pursuant to paragraph (a) of this section which is filed with a registration statement shall be set forth on the facing page thereof following the calculation of the registration fee. Any such amendment filed after the filing of the registration statement, any amendment altering the proposed date of public sale of the securities being registered, or any amendment filed pursuant to paragraph (b) of this section may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by the filing of a signed copy of the amendment. Such confirmation shall not be deemed an amendment.

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S–8 or on Form S–3 relating to a dividend or interest reinvestment plan.

§ 230.475a Pre-effective amendments on Form S–8 and certain pre-effective amendments on Form S–3 deemed filed with consent of Commission.

Amendments to a registration statement on Form S–8 or to a registration statement on Form S–3 relating to a dividend or interest reinvestment plan filed prior to the effectiveness of such registration statement shall be deemed to have been filed with the consent of the Commission and shall accordingly be treated as part of the registration statement.

§ 230.477 Withdrawal of registration statement or amendment.

(a) Except as provided in paragraph (b) of this section, any registration

statement or any amendment or exhibit thereto may be withdrawn upon application if the Commission, finding such withdrawal consistent with the public interest and the protection of investors, consents thereto.

(b) Any application for withdrawal of a registration statement filed on Form S-8 or on Form S-3 relating to a dividend or interest reinvestment plan, and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

(c) The application for withdrawal under either paragraphs (a) or (b) of this section, shall be signed and shall state fully the grounds upon which made. The fee paid upon the filing of the registration statement will not be returned to the registrant. The papers comprising the registration statement or amendment thereto shall not be removed from the files of the Commission but shall be plainly marked with the date of the granting of such withdrawal and in the following manner: "Withdrawn upon the request of the registrant, the Commission consenting thereto."

§ 230.479 Procedure with respect to abandoned registration statements and post-effective amendments.

When a registration statement, or a post-effective amendment to such a statement, has been on file with the Commission for a period of nine months and has not become effective the Commission may, in its discretion, proceed in the following manner to determine whether such registration statement or amendment has been abandoned by the registrant. If the registration statement has been amended, otherwise than for the purpose of delaying the effective date thereof, or if the post-effective amendment has been amended, the nine-month period shall be computed from the date of the latest such amendment.

(a) A notice will be sent to the registrant, and to the agent for service named in the registration statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the registrant and the agent for service reflected in the registration statement. Such notice will inform the registrant and the agent for service that the registration statement or amendment is out of date and must be either amended to comply with the applicable requirements of the Act and the rules and regulations thereunder or be withdrawn within 30 days after the date of such notice.

(b) If the registrant or the agent for service fails to respond to such notice by filing a substantive amendment or withdrawing the registration statement and does not furnish a satisfactory explanation as to why it has not done so within such 30 days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the registration statement or amendment abandoned.

(c) When such an order is entered by the Commission the papers comprising the registration statement or amendment will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated ———— ."

Nondisclosure of Contract Provisions

§ 240.485 Contracts in general.

Public disclosure will not be made of the provisions of any material contract or portion thereof if the Commission determines that such disclosure would impair the value of the contract and is not necessary for the protection of investors. Except for requests made on or in connection with filings on Form S-8 or on Form S-3 relating to a dividend or interest reinvestment plan, in any case where the registrant desires the Commission to make such a determination, the procedure set forth below shall be followed:

(a) The registrant shall omit from the registration statement as originally filed the portion of the contract which it desires to keep undisclosed, or, if the registrant desires to keep the entire contract undisclosed, any copy of the contract.

(b) The registrant shall file with the registration statement, but not bound as part thereof, (1) three copies of the contract or portion thereof which it desires to keep undisclosed, clearly marked "Confidential Treatment," and (2) an application for an order making the above described determination. The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such application shall set forth the consideration relied upon for obtaining such order and shall include the length of time for which nondisclosure is requested and justification for the time period selected. In addition, the registrant shall state whether or not the registrant is willing to permit the disclosure of the material contract or portion thereof. (Such permission is one factor which will be considered by the Commission in ruling on the application.) Pending the granting or denial by the Commission of the application, the terms and existence of the contract of portion thereof will be kept undisclosed.

(c) If the Commission determines that the application shall be granted, an order to that effect will be entered. Prior to any determination denying the application, confirmed telegraphic notice of an opportunity for hearing, at a specified time within 10 days after the dispatch of such notice, will be sent to the agent for service. After such hearing, an order granting or denying the application will be entered.

(d) If the Commission denies the application, confirmed telegraphic notice of the order of denial will be sent to the agent for service. In such case, within 10 days after the dispatch of such notice, the registrant shall have the right to withdraw the registration statement in accordance with the terms of § 230.477, but without the necessity of stating any grounds for the withdrawal or of obtaining the further assent of the Commission. In the event of such withdrawal, the contract or portion thereof filed confidentially will be returned to the registrant.

(e) If the registration statement is not withdrawn pursuant to paragraph (d) of this section, the contract or portion thereof filed confidentially will be made available for public inspection as part of the registration statement, and the registrant shall amend the registration statement to include all information required to be set forth in regard to such contract or portion thereof.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. By revising § 240.3b-2 to read as follows:

§ 230.3b-2 Definition of "officer."

The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person performing similar functions with respect to any organization whether incorporated or unincorporated.

5. By revising paragraph (a) of § 240.3b-4 to read as follows:

§ 230.3b-4 Definition of "foreign government", "foreign issuer" and "foreign private issuer."

(a) The term "foreign government" means the government of any foreign country, of any political subdivision of a foreign country or of any community or

multi-national organization of foreign countries.

* * * * *

6. By adding § 240.3b–7 to read as follows:

§ 240.3b–7 Definition of "executive officer."

The term "executive officer," when used with reference to a registrant, means its president, secretary or treasurer, any vice president of the registrant in charge of a principal business unit, division of function (such as sales, administration or finance) or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

7. By removing § 240.12b–4 and § 240.12b–24 and amending Regulation 12B (17 CFR 240.12b–1 to 240.12b–36) by revising §§ 240.12b–1, 240.12b–2(d), 240.12b–2(f), 240.12b–2(j), 240.12b–2(o), 240.12b–2(r), 240.12b–2(u), 240.12b–11, 240.12b–12, and 240.12b–23 and adding § 240.12b–2(j–1) to read as follows:

Regulation 12B: Registration and Reporting—General

§ 240.12b–1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to Sections 12(b) and 12(g) of the Act and all reports filed pursuant to Sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

§ 240.12b–2 Definitions.

* * * * *

(d) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

* * * * *

(f) *Control.* The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

* * * * *

(j) *Material.* The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

(j–1) *North American issuer.* The term "North American issuer" means any foreign private issuer incorporated or organized under the laws of Canada or Mexico or any political subdivision thereof.

* * * * *

(o) *Promoter.* (1) The term "promoter" includes:

(i) Any person who, acting alone or in conjuntion with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer;

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration or services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (o) (1) of this section may be referred to as "founders" or "organizers" or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

* * * * *

(r) *Significant subsidiary.* The term "significant subsidiary" means a subsidiary meeting any one of the following conditions:

(1) The assets of the subsidiary, or the investments in and advances, to the subsidiary by its parent and the parent's other subsidiaries, if any, exceed 10 percent of the assets of the parent and its subsidiaries on a consolidated basis.

(2) The sales and operating revenues of the subsidiary exceed 10 percent of the sales and operating revenues of its parent and the parent's subsidiaries on a consolidated basis.

(3) The subsidiary is the parent of one or more subsidiaries, and, together with such subsidiaries would, if considered in the aggregate constitute a significant subsidiary.

* * * * *

(u) *Totally held subsidiary.* The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

* * * * *

§ 240.12b–4 Interpretation of requirements. [Removed]

Formal Requirements

§ 240.12b–11 Number of copies; signatures; binding.

(a) Except as provided in a particular form, three complete copies of each statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission. At least one complete copy of each statement shall be filed with each exchange on which the securities covered thereby are to be registered. At least one complete copy of each report under section 13 of the Act shall be filed with each exchange on which the registrant has securities registered.

(b) At least one copy of each statement or report filed with the Commission and one copy thereof filed with each exchange shall be manually signed in the manner prescribed by the appropriate form.

(c) Each copy of a statement or report filed with the Commission or with an exchange shall be bound in one or more parts. Copies filed with the Commission shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

§ 240.12b–12 Requirements as to paper, printing and language.

(a) Statements and reports shall be filed on good quality, unglazed white paper approximately 8½ by 11 inches or approximately 8½ by 13 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to that size.

(b) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the statement or report of any portion thereof may be prepared by any similar process which,

in the opinion of the Commission, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(d) Statements and reports shall be in the English language. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

General Requirements as to Contents

§ 240.12b-23 Incorporation by reference.

(a) Except for exhibits covered by Rule 12b-32 (17 CFR 240.12b-32), information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that a proxy or information statement incorporated by reference in response to Part III of Form 10-K (17 CFR 249.310) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

§ 240.12b-24 Summaries or outlines of documents. [Removed]

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; Sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 15(d) and 23(a), 48 Stat. 882, 892, 894, 895 and 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 3, 4, 5 and 6(d), 78 Stat. 565-574; sec. 28(c), 84 Stat. 1435; secs. 3 and 18, 89 Stat. 1149, 15 U.S.C. 77f, 77g, 77j, 77s(a), 78c(b), 78*l*, 78o(d), 78w(a))

Statutory Authority

These amendments are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933 and Sections 3(b), 12, 13(a), 15(d) and 23(a) of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Securities Act Release No. 6333 (August 6, 1981) will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for such certification are that (i) the proposed amendments to Regulation C (17 CFR 230.400 through 230.494) and Regulation 12B (17 CFR 240.12b-1 through 240.12b-36) will up-date or eliminate out-moded, unnecessary or inconsistent regulation; (ii) the proposed amendments will implement the stream-lined reporting requirements established by the integrated disclosure program; and (iii) the Commission is not aware of any costs which will be imposed on any persons (including small entities) in connection with the proposed amendments. Thus, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

Dated: August 6, 1981.

John S.R. Shad,

Chairman.

[FR Doc. 81-23440 Filed 8-13-81; 12:56 pm]

BILLING CODE 8010-01-M

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17 CFR Parts 229 and 230

[Release Nos. 33-6334; 34-18010; IC-11890; File No. S7-896]

Delayed or Continuous Offering and Sale of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission has revised in response to public comment a proposed rule to permit the registration of securities to be offered and sold on a delayed or continuous basis (so-called "shelf registration") and is republishing the revised proposal for further comment. As revised, the proposed rule would permit the shelf registration of securities if certain conditions are met. These conditions are designed to assure a bona fide intent to offer and sell the securities, accurate and current information about the registrant and the plan of distribution, and liability protection for investors under the Securities Act of 1933. The proposal also places certain additional limitations upon the availability of shelf registration for primary, at the market offerings of equity securities. The proposed Rule is designed to facilitate the development of innovative capital raising techniques which reduce burdens and costs to registrants while maintaining full investor protection under the federal securities laws and is one of a series of revisions and proposals published today that are designed to eliminate out-moded and duplicative requirements and to enhance the integration of disclosure systems.

DATE: Comments should be received on or before October 30, 1981.

ADDRESSES: Comments should be addressed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-896. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Beverly Rubman, (202) 272-2604, or

Catherine Collins McCoy, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, and, with respect to market-related matters, Carlos Morales, (202) 272–2876, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission has revised in response to public comment proposed Rule 462A [17 CFR 230.462a] under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] which, if adopted, would permit the registration of securities that are to be offered and sold on a delayed or continuous basis in the future ("shelf registration") and today is republishing the revised Rule for further comment. Proposed Rule 462A, as revised, differs in certain significant respects from the original proposal. However, the proposed Rule would still permit shelf registration of securities, provided that certain conditions, designed to assure a bona fide intent to offer and sell the securities registered, the availability of accurate and current information and liability protection under the Securities Act, are met. The proposal has been revised to place certain limitations upon the availability of shelf registration for at the market offerings of equity securities made by or on behalf of the registrant. If proposed Rule 462A is adopted, the Commission intends to eliminate Guide 4 of the Guides for the Preparation and Filing of Registration Statements and Periodic Reports (the "Guides") [1] that currently contains staff policy concerning shelf registration.[2]

The Commission recognizes that proposed Rule 462A, particularly insofar as it would permit, for the first time, primary offerings of equity securities on a continuous basis, may result in the development of innovative capital-raising methods of public companies that can serve the interests of issuers and the investing public. At the same time, because the proposal is a significant departure from past practice, the Commission intends to monitor the operation of the Rule, if adopted, in order to insure that its purposes are met and that abuses do not develop.

The Commission today has proposed or reproposed for comment in separate releases several other rulemaking proposals. These proposals include: (1) a three tier system for the registration of securities, Forms S–1, S–2 and S–3 (originally denominated for comment purposes as Forms A, B and C);[3] (2) expansion of Regulation S–K [17 CFR 229.001 et seq.] to include additional disclosure items and the rescission of the Guides, other than Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides;[4] (3) amendments to Regulation C under the Securities Act [17 CFR 230.400 through 230.494] and Regulation 12B [17 CFR 240.12b–1 through 12b–36] under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.] to simplify and clarify procedural requirements, thereby commencing the Commission's "sunset" review of those regulations;[5] (4) a rule relating to the responsibility of persons subject to Section 1 of the Securities Act [15 U.S.C. 77k] in an integrated disclosure system;[6] (5) a statement of the Commission's policy with respect to the disclosure of security ratings;[7] and (6) amendments to other Securities Act registration forms [8] and certain Exchange Act forms and schedules [9] to incorporate the new Regulation S–K provisions and make other changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as the continuation of the Commission's "sunset" review of all existing rules and regulations.

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 rulemaking proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

I. Background

On December 23, 1980, the Commission issued a release [10] (hereinafter referred to as the "Guides Release") in which it proposed for comment the reorgnization of Regulation S–K, the elimination or codification in Regulation S–K or Regulation C of all of the Guides,[11] except those pertaining to specific industries, and certain revisions to the General Rules and Regulations under the Securities Act [17 CFR 230.100 et seq.] and the Exchange Act [17 CFR 240.0–1 et seq.]. The Commission's proposal concerning shelf registration derived from its analysis and discussion of Guide 4. Guide 4 interprets the last sentence of Section 6(a) of the Securities Act [15 U.S.C. 77f(a)]—that "[a] registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered"—as prohibiting the registration of securities for a delayed or postponed offering. However, the Guide also cites various instances in which such shelf registration is permitted, for example, when the registrant proposes to engage in a continuing acquisition program or in the case of securities underlying exercisable options, warrants or rights.

In the Guides Release, the Commission discussed the policies underlying Section 6(a) of the Securities Act and practice under Guide 4.[12] It concluded that "a restrictive policy on shelf registration is not appropriate or necessary for the protection of investors." [13] The Commission, therefore, proposed that Guide 4 be eliminated and that its stated prohibition of shelf registration be replaced with proposed Rule 462A which would permit shelf registration provided that certain conditions are met.

The Commission received twenty-two letters in response to its invitation for public comment.[14] The commentators generally favored the Commission's efforts to clarify and expand the permissible uses of shelf registration. In particular, these commentators observed that the proposal would provide issuers with the flexibility to take advantage of favorable conditions in a changing market and that it would facilitate the development of innovative techniques

[1] *See* Securities Act Release No. 4936 [December 9, 1968] [33 FR 18617], as amended.

[2] *See* discussion of the proposed disposition of all of the Guides in Securities Act Release No. 6332 [August 6, 1981].

[3] Securities Act Release No. 6331 [August 6, 1981], as originally proposed in Securities Act Release No. 6235 [September 2, 1980] [45 FR 63693] [the "ABC Release"].

[4] Securities Act Release No. 6332 [August 6, 1981] [the "Regulation S–K Release"], as originally proposed in Securities Act Release No. 6276 [December 23, 1980] [45 FR 78] [the "Guides Release"].

[5] Securities Act Release No. 6333 [August 6, 1981] [the "Regulation C Release"].

[6] Securities Act Release No. 6335 [August 6, 1981].

[7] Securities Act Release No. 6336 [August 6, 1981].

[8] Securities Act Release No. 6337 [August 6, 1981].

[9] Securities Act Release No. 6338 [August 6, 1981].

[10] Securities Act Release No. 6276 [December 23, 1980] [46 FR 78].

[11] For a description of the background and development of the Guides generally, *see* 46 FR at 82–83.

[12] *See* the discussion in 46 FR at 87–88.

[13] 46 FR at 88.

[14] Letters were received from the following categories of commentators: corporations [10]; law firms and associations [7]; the securities industry [4]; and other associations [1]. Copies of these letters are available for public inspection and copying in the Commission's Public Reference Room [File No. S7–869]. For the convenience of the public, a copy of the summary of comments prepared by the staff of the Commission has been placed in File No. S7–869 and also is available for public inspection and copying. In addition, File No. S7–869 contains all comment letters received by the Commission concerning the other proposals in the Guides Release and a copy of the comment summary prepared by the Commission's staff.

for raising capital, thus reducing burdens and costs to registrants. At the same time, a substantial number of specific comments were directed to various aspects of the Rule as proposed, particularly with regard to expanding the types of offerings for which shelf registration would be available and revising the undertakings to file post-effective amendments to the registration statement. Commentators also responded to specific questions raised in the Release concerning the market impact of certain forms of primary offerings that would, for the first time, be permitted by the proposed Rule. The Rule proposed herein reflects many of those comments and suggestions. The specific comments and responses are discussed where appropriate in the following portions of this release.

Several commentators were concerned that proposed Rule 462A did not attract widespread attention and comment from issuers and investment bankers because the proposal appeared in the middle of a lengthy release detailing the re-organization of Regulation S–K and the generally nonsubstantive incorporation of provisions from the Guides into Regulation S–K and Regulation C. These commentators recommended that the proposal be republished for comment in a separate release in order that it receive the careful consideration that it deserves.

In light of these comments, the revisions made to the Rule as proposed and the Commission's efforts to develop a system of integrated disclosure as reflected in the other releases promulgated today, the Commission considers it appropriate to repropose Rule 462A for public comment in a separate release. In so doing, the Commission expects that all issuers, market professionals and other interested persons will receive adequate notice of its proposals so that thoughtful comment can be made.

II. The original Rule Proposal

As previously discussed, the Commission concluded that shelf registration of securities could be permitted if three basic conditions were met: the seller has a bona fide intention to offer and sell the securities registered; accurate and current information about the issuer and the offering is available throughout the life of the shelf registration statement; and investors receive full liability protection under the Securities Act.

To meet the first condition, Rule 462A, as proposed, permitted the registration of an amount of securities that reasonably could be expected to be offered and sold within two years from the effective date of the initial registration statement. However, the proposed Rule also permitted shelf registration in certain specific instances in which it was clear that, at the time of registration, the seller possessed a bona fide intent to offer and sell the securities registered. Therefore, securities could be registered for a continuous or delayed offering if they were: (1) reasonably expected to be offered or sold pursuant to dividend or interest reinvestment plans or employee benefit plans of the registrant; (2) the subject of options, warrants or rights which were, or within two years from the effective date of the initial registration statement would be, exercisable; (3) issuable upon the conversion of other securities, if such other securities also were registered on the effective date; or (4) pledged as collateral. Although the proposal set no outer limits upon the duration of an offering of the securities so registered, the registrant was required to undertake to deregister any of the registered securities which remained unsold at the termination of the offering or as to which there was no longer a reasonable expectation of sale.

In order to insure that accurate and current information was available whenever shelf-registered securities actually were sold, the proposal required that the registrant include several specific undertakings in the registration statement. Under the Rule, as proposed, the registrant would undertake: (1) "[t]o file post-effective amendments (or, with the permission of the Commission, prospectuses under Rule 424(c) [17 CFR 230.424(c)]) whenever required to set forth any information necessary in order that the registration statement not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein not misleading"; and (2) to file any prospectus required by Section 10(a)(3) of the Securities Act[15] as a post-effective amendment. The proposal also contained an instruction which exempted registrants who registered their securities on proposed Form A[16] and incorporated by reference their periodic reports under the Exchange Act into such registration statements from filing post-effective amendments if the information those amendments would have contained was included in those periodic reports—unless the prospectus contained a material misstatement of fact or failed to state a material fact necessary to make the information in the prospectus not misleading as of any time during the offering.

In order to insure that liability protection under the Securities Act remained in force throughout the life of the shelf registration statement, the proposal mandated one additional undertaking. Pursuant to that undertaking, the registration statement would specify that each post-effective amendment would be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time would be deemed to be the initial bona fide offering thereof.

Finally, the Rule, as proposed, declared that its provisions did not apply to registration statements filed by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

III. Synopsis of the Revised Rule Proposal

At the outset, the Commission wishes to emphasize that proposed Rule 462A is a procedural rule that applies to securities which are registered on any registration form and are intended to be offered in a certain fashion—that is, on a continuous or delayed basis. It does not affect the eligibility of registrants (domestic or foreign private issuers) to use any of those forms,[17] nor does it alter the disclosure requirements contained in those forms, except insofar as the Rule may add certain items of disclosure or undertakings, nor does it change any other provisions in the forms, such as those detailing the incorporation by reference of Exchange Act reports or setting forth specific prospectus or report delivery requirements.[18]

The revised proposals generally reflect the following changes to Rule 462A as it was originally proposed: (1)

[15] Section 10(a)(3) of the Securities Act provides that "when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense." 15 U.S.C. 77j(a)(3).

[16] *See* the ABC Release.

[17] Registrants should be aware that, under proposed Rule 401(b) of Regulation C [17 CFR 230.401(b)], they must meet the eligibility criteria for the use of the form upon which the securities have been registered at the time that they file any post-effective amendment for the purposes of meeting Section 10(a)(3) of the Securities Act. *See* the Regulation C Release.

[18] In particular, registrants should be aware that a Form S–8 [17 CFR 239.61b] registration statement for securities issued pursuant to an employee benefit plan is almost always a shelf registration under proposed Rule 462A. The provisions of the proposed Rule are intended to harmonize with the requirements of Form S–8.

the proposal expands somewhat the provisions concerning the amount of securities that can be registered on a shelf registration statement so that securities to be issued upon the exercise or conversion of outstanding options, warrants, rights or convertible securities are treated equally and are not subject to a two year limitation for reasonable expectations of sales; (2) similarly, securities offered and sold by persons other than the issuer, a subsidiary of the issuer or a person of which the issuer is a subsidiary ("secondary offerings") and securities registered on Form S–12 [17 CFR 239.19] and Form C–3 [17 CFR 239.5]—American depositary receipts for foreign securities—can be registered without regard to the two-year standard; (3) in the case of a registration statement for a primary at the market offering of equity securities, the offering and sale must be made through an underwriter or underwriters, who must be named in the prospectus;[19] and (4) the proposal now exempts from its coverage only certain investment companies registered under the Investment Company Act of 1940, and registration statements filed by any foreign government.

In addition, the undertakings set forth in the original proposal and the instruction to the Rule regarding permissible incorporation by reference have been modified and moved to a new section of Regulation S–K entitled "Undertakings." [17 CFR 229.512(a)].[20] As now proposed, post-effective amendments to the registration statement would be required in the following situations: (1) to include a prospectus required by Section 10(a)(3) of the Securities Act; (2) to reflect any facts or events arising after the effective date of the registration statement which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and (3) to include any material information with respect to the plan of distribution, including (but not limited to) any addition or deletion of a managing underwriter, other than as a co-manager.[21] Furthermore, the proposal now would permit incorporation by reference of periodic reports filed under the Exchange Act in lieu of a post-effective amendment for registration statements upon Form S–8 as well as upon proposed Form S–3.

A. Bona Fide Intention to Offer and Sell

Commentators generally favored the proposals contained in subparagraph (a)(1) of the Rule, as proposed. However, a number of suggestions were made to expand or clarify the permissible categories of securities that would be eligible for shelf registration under the proposed Rule. The specific recommendations and revisions made to the proposal in response to the comment letters are described in detail below.

1. *The Two Year Standard.* Rule 462A, as proposed, provided that any security could be registered on a shelf registration statement in an amount which is reasonably expected to be offered and sold within two years of the registration statement's effective date. The majority of the commentators that addressed this provision approved of the two year test because it would provide a flexible yet measurable standard by which to evaluate the amount of securities to be registered under the Rule.[22] However, one commentator suggested that the Rule itself, not just the release, should make clear that the two year standard applies only to the reasonable expectations of the seller at the time of registration and does not set a limit upon the duration of the actual sales efforts. In accordance with that suggestion, subparagraph (a)(1)(i) has been revised to indicate that the reasonable expectation of sales is to be measured at the time that the registration statement is declared effective.

Several commentators objected to the two year standard, noting that Section 6(a) of the Securities Act itself contains no such limitation upon sales or intentions to sell and that no limitation is currently imposed by the Commission upon permissible shelf registrations on Form S–16 [17 CFR 239.27] for secondary offerings or offerings of securities underlying options, warrants, rights or convertible securities. These commentators asserted that other provisions of the Rule, as proposed, notably the undertakings to deregister, to provide current information and to file post-effective amendments and prospectuses under Rule 424(c)[23]—are sufficient to deal with the unique problems raised by shelf offerings. At the same time, one of these commentators did recognize that "there is some feeling of concern about a completely open-ended registration for a primary offering of securities."

In regard to registration statements for secondary offerings, one commentator observed that Commission concerns about an open-ended shelf registration would not exist because the amount of securities to be offered would be fixed by the amount owned by the selling security holder. In addition, this commentator asserted that a selling security holder might lose his or her right to compel the issuer to register the securities owned[24] if all such securities were not registered for later resales. In light of the comments received, the Commission has modified the proposal so that secondary offerings of securities—that is, securities offered and sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is subsidiary—may be registered without regard to the two year standard.[25] This change accords with current practices. The Commission's considerable experience with shelf registration for secondary offerings has not demonstrated a need to impose any limitations upon the amount of securities registered for such offerings.

The Commission continues to believe, however, that subparagraph (a)(1)(i), with the two year benchmark, is an appropriate condition to its allowing the general use of shelf registration statements for primary offerings. The entire structure of the Securities Act is transactional—that is, its requirements are triggered by the occasion of an offer and sale of securities. For this reason, since its earliest experiences under the Securities Act, the Commission consistently has interpreted ths last

[19] The provision of the proposed Rule relating to primary at the market equity offerings is discussed in a separate section at the end of the release. That section also discusses certain issues raised by the commentators concerning the interrelationship of proposed Rule 462A and the antimanipulative rules under the Exchange Act, particularly Rule 10b–6 [17 CFR 240.10b–6].

[20] This release discusses each undertaking that is applicable to a shelf registration statement and includes the full text of the proposed undertakings.

[21] In addition, where appropriate, registrants can continue to reflect other material changes in or additions to the information contained in the registration statement by means of a prospectus under Rule 424(c) without Commission permission.

[22] In the Guides Release, the Commission explained that the two year benchmark was derived from general staff practice in evaluating the reasonableness of the amount of the securities that were proposed to be registered in light of the purposes of the proposed offering.

[23] These requirements appeared as subparagraphs (a)(2)(i), (ii) and (iv) of Rule 462A as originally proposed.

[24] Under section 6(a) of the Securities Act, only the issuer can register securities for sale. In order to protect themselves, persons receiving unregistered securities frequently enter into arrangements with the issuer at the time of receipt of these securities that allow such persons, under specified circumstances, to compel the issuer to register the securities so received for resale by those persons.

[25] This revision is reflected in subparagraph (a)(1)(ii) of the proposed Rule, as modified. A comparable change has been made in the instructions to Form S–8 concerning resales by affiliates of securities received pursuant to registered employee benefit plans. *See* Securities Act Release No. 6337, *supra*.

sentence of Section 6(a) as permitting only the registration of securities that the registrant proposes to offer in the proximate future.[26] In the Commission's view, the registration of an unlimited amount of securities to be offered and sold over the course of many years into the future is inconsistent with the basic framework of the Securities Act, as well as the specific provision in Section 6(a). At the same time, the Commission believes that permitting shelf registration for certain offerings of securities that the registrant reasonably expects to offer and sell within the next two years would provide such a registrant with a desirable degree of flexibility to meet often-changing market conditions without harming the structure and purposes of the Securities Act. Furthermore, an issuer can reasonably be expected to make financial plans at least two years in the future so that the registration of securities pursuant to subparagraph (a)(1)(i) of the proposed Rule accords with the statutory language that a registration statement pertain to securities "as proposed to be offered." Accordingly, the two year test of subparagraph (a)(1)(i) has been retained insofar as it applies to offerings by or on behalf of the registrant, its parents and its subsidiaries.[27]

2. *Employee Benefit Plans and Dividend and Interest Reinvestment Plans.* The commentators generally approved of this provision but made several suggestions for additions or clarifications as to the scope of the proposal. For example, several commentators noted that the term "employee benefit plan" might be too restrictive because it could be interpreted as applying to plans available only to large numbers of employees, as distinct from plans available only to salaried or management employees or because it might not be viewed as encompassing all plans devised by registrants pursuant to which securities are issued to employees. Also, several commentators noted that the provision does not entirely parallel that contained in the Instructions to the use of Form S–16 that permits the registration for continuous offerings of securities issued pursuant to dividend or interest reinvestment plans.[28]

The Commission agrees with the commentators that the scope of the subparagraph is not sufficiently clear in the absence of definitions for the terms used. Accordingly, the Commission is proposing that the phrases "employee benefit plan" and "dividend or interest reinvestment plan" be defined and that such definitions appear, not in revised Rule 462A, but in the definitional section of Regulation C[29] so that they will apply to all registration statements filed under the Securities Act.[30] The proposed definitions reflect the suggestions made by the commentators and are intended to encompass all plans mentioned by those commentators. However, any other issuer plans that do not meet the proposed definitions could still be registered in accordance with the two year standard in subparagraph (a)(1)(i) of the proposed Rule.[31]

Finally, the provision in proposed Rule 462A has been modified so that it applies to "securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant."[32]

3. *Securities Underlying Options, Warrants or Rights or Convertible Securities.* Commentators questioned the differences in treatment accorded securities underlying options, warrants and rights, on the one hand, and convertible securities, on the other hand, by the proposed Rule. In particular, those commentators who objected to the two year standard in subparagraph (a)(1)(i) of the proposed Rule also opposed the inclusion of a two year test for exercisable options, warrants or rights. Another commentator recommended that a two year limitation also be imposed upon convertible securities to make the two provisions congruent.

Several commentators also objected to the fact that the proposal permitted the registration of all securities underlying options, warrants and rights irrespective of the registration status of those options, warrants or rights while securities underlying convertible securities could not be registered unless the convertible securities themselves were registered on the effective date of the shelf registration statement. These commentators observed that the treatment of convertible securities is inconsistent with current practice under Form S–16 and that there is no need for such a provision.

The Commission agrees in both instances with the observations of the commentators and has revised proposed Rule 462A to accord equal treatment to both classes of securities. Under the proposed Rule, as revised, shelf registration will be available for securities "to be issued upon the exercise of outstanding options, warrants or rights,"[33] without regard to the time period of possible exercise. At the time the options, warrants or rights are registered, the registrant clearly is proposing to offer the underlying securities, irrespective of when the actual exercise occurs. Therefore, a two year limitation is unnecessary just as it is in the case of securities to be issued upon the conversion of other securities.

Similarly, the Commission has determined that there is no need to require that the convertible securities themselves be registered in order to allow the shelf registration of the underlying securities. This requirement has been eliminated from the proposed Rule. The Commission now proposes to permit shelf registration for "securities which are to be issued upon conversion of other outstanding securities."[34] It should be noted that the proposed provision is not limited to situations in which securities are convertible only into other securities of the same issuer; rather, it applies equally to securities

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[26] *See, e.g., In re United Combustion Corporation*, 3 S.E.C. 1062 (1938); *In re Shawnee Chiles Syndicate*, 10 S.E.C. 109 (1941).

[27] It should be noted that subparagraph (a)(1) of the proposed Rule would codify the permissible forms of shelf registration under Guide 4 except that securities which might be issued in a continuing acquisition program over a period longer than two years would become subject to the two year limitation. Also, assuming Guide 10 is eliminated, as proposed in the Guides Release [46 FR at 92], transferable options, warrants or rights and securities issuable upon their exercise that are issued to underwriters in connection with a public offering of securities would no longer be required to be registered although proposed Rule 462A would permit such registration. *See* the Regulation S–K Release.

[28] See Item 4 of General Instruction A to Form S–16 [17 CFR 239.27]. This same provision was incorporated into proposed Form A. *See* the ABC Release, *supra*, 45 FR at 63710. That provision has been revised and republished in Securities Act Release No. 6331, *supra*.

[29] *See* proposed Rules 405(i) and 405(k) as discussed in the Regulation C Release. In particular, one commentator suggested that it was unclear whether options issued under a registrant's employee plan would be covered by subparagraph (a)(1)(ii) or by subparagraph (a)(1)(iii)(A) of the proposed Rule because the latter provision generally deals with securities underlying options, warrants and rights. Another commentator suggested that monthly investment plans be included specifically in subparagraph (a)(1)(ii). For a description of these latter plans and their status under the Securities Act *see* Securities Act Release No. 4790 [July 13, 1965] [30 FR 9059]. All of these plans clearly would be "employee benefit plans" under the definition proposed today in Regulation C.

[30] Securities offered pursuant to employee benefit plans generally are registered on Form S–8 but neither the proposed definition nor proposed Rule 462A is limited to securities which may be registered on Form S–8.

[31] For example, the staff has processed registration statements for shelf offerings of common stock to customers of several large public utilities. *See, e.g.*, File No. 2–67577.

[32] It also has been redesignated as proposed subparagraph (a)(1)(iii).

[33] Subparagraph (a)(1)(iv) of the proposed Rule, as revised

[34] The provision has been redesignated subparagraph (a)(1)(v) of the proposed Rule, as revised.

convertible into securities of an affiliate or of an unrelated issuer.[35]

4. *Pledged Securities.* No commentators addressed this provision. The Commission continues to believe that it is appropriate to single out pledged securities for registration under Rule 462A without regard to the two year standard. Those securities are the subject of a bona fide intent to offer and sell because the prospective seller has transferred a legal right to sell the securities in question to the pledgee. Therefore, the provision appearing in the original Rule proposal has been retained and redesignated as proposed subparagraph (a)(1)(vi).

5. *Securities Registered on Form S–12 and Form C–3* The proposed Rule has been revised to include an additional category of securities that may be registered on a shelf registration statement without regard to the two year standard. The revised proposal now would include American depositary receipts ("ADRs")[36] registered on Forms S–12 [17 CFR 239.19] and C–3 [17 CFR 239.5]. An ADR is a substitute trading certificate. It is usually issued by a U.S. bank, denominated in shares, and certifies that a stated number of securities of a foreign private issuer have been deposited and will be held as long as the ADR remains outstanding. Once a depositary arrangement has been created, usually at the instigation of a U.S. broker or arbitrageur, any person can deposit securities of the foreign issuer and receive registered ADRs at any time. This system has functioned without incident, and the Commission sees no need to alter current practice. Accordingly, subparagraph (a)(1)(vii) of proposed Rule 462A would permit the shelf registration of ADRs without regard to the two year limitation.

6. *Outer Limits.* In the Guides Release, the Commission requested specific comment on whether some outer limit ought to be placed upon the duration of a shelf offering.[37] The commentators uniformly opposed such a requirement. Most commentators argued that an outer limit was unnecessary because the proposed Rule required the registrant to undertake to deregister securities under certain circumstances and to provide current information throughout the life of the shelf registration statement. At this time, the Commission agrees with the commentators that no outer limit ought to be placed on the length of a shelf offering provided that the other conditions in proposed Rule 462A are met. Nonetheless, the absence of such outer limits confirms the importance of careful scrutiny of the amounts of securities that are proposed to be registered. One commentator urged that the staff defer to the good faith judgment of the registrant or selling security holder in determining the proper amount of securities to be registered. The Commission does not intend that its staff would second-guess the sellers' good faith determinations. However, registrants should be prepared, when requested, to furnish as supplemental information the justification for the registration of the particular amount of securities.

7. *Undertaking to Deregister.* As noted by several commentators, the two year standard contained in subparagraph (a)(1)(i) of the proposed Rule and the absence of an outer limit upon the duration of a shelf offering were balanced by a requirement in subparagraph (a)(2)(iv) of the proposed Rule that the registration statement contain an undertaking by the registrant to deregister by post-effective amendment any of the registered securities which remain unsold at the termination of the offering or as to which there is no longer a reasonable expectation of sale.

Of the four commentators that addressed this provision, three objected to the undertaking to deregister securities when there is "no longer a reasonable expectation of sale." These commentators observed that the phrase is so subjective and imprecise as to make compliance difficult. In addition, they noted that this undertaking is an unnecessary change from current practice.[38] Two commentators explained that, in most instances, the registrant or selling security holder would elect to deregister securities as to which there was no longer a reasonable expectation of sales in the foreseeable future because, in the words of one commentator, of "the disclosure and other restrictions" imposed upon them and their underwriters by the Securities Act. However, these commentators believed that the decision to deregister should be left to the registrant or selling security holder.

The fourth commentator to address this provision argued that the first half of the undertaking—to deregister securities upon the termination of the offering—lacked clarity because of the difficulty in defining the term "offering" when there may be several definable offerings made within the longer life of a shelf registration statement. This commentator recommended that the undertaking encompass only deregistration when there is no longer a reasonable expectation of sale.

The Commission shares the concern of most commentators on this provision that a standard based upon termination of reasonable expectations of sales may be too subjective and imprecise to be meaningful. For example, market conditions or other economic forces may make sales unlikely during a certain period but the seller still may want to sell the securities as soon as conditions improve. In that instance, the seller would be required to analyze at what point it no longer could reasonably expect to sell the securities in question. Under today's current volatile market conditions, sales might be impossible for several months or the situation might change quickly so that sales might resume after a hiatus of several days. The Commission would not, therefore, ordinarily conclude that the securities should be deregistered in those circumstances.

Accordingly, the Commission has determined that an undertaking to deregister securities should only apply to securities that remain unsold at the termination of the offering. As previously noted, this requirement currently appears in several registration forms and does not seem to have generated any confusion as to its meaning. The phase "termination of the offering" has been and should continue to be interpreted as referring to the overall offering of all securities registered which may be composed of smaller distributions as described in the plan of distribution. In the Commission's view, the deregistration requirement helps in verifying that all the requirements of the Securities Act—particularly the requirements of updating the prospectus under Section 10(a)(3) and delivering the prospectus under Section 5(b)—are met. Such a requirement in the form of an undertaking also serves to remind registrants that their obligations under the Securities Act do not cease when the registration statement becomes effective.

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[35] In fact, under Section 3(a)(9) of the Securities Act [15 U.S.C. 77(c)(a)(9)], many conversions of securities into securities of the same issuer would be exempt from registration under the Securities Act. That provision exempts "any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange."

[36] These securities are occasionally referred to as "American shares," "American shares certificates," or "New York shares."

[37] 46 FR at 89.

[38] *See, e.g.* clause (d) of Undertaking A to Forms S–16, and S–7 [17 CFR 239.26] and clause (4) of Undertaking B to Form S–8.

B. Accurate and Current Information

As discussed in the Guides Release, early Commission reaction against the use of shelf registration arose, in large part, from the fact that the registration of securities that were not to be offered, in whole or in part, for immediate sale, gives "the appearance of a registered status" [39] without providing its true substance—accurate and current information.[40] Rule 462A proposed to meet that basic concern of the Securities Act by requiring the registrant to include in the registration statement several undertakings which would insure that investors receive accurate and current information no matter when the shelf-registered securities are sold.

1. *Undertakings to File Post-Effective Amendments.* Although many commentators agreed that the undertakings required in subparagraph (a)(2) of the proposed Rule would provide adequate and appropriate protection for investors, others questioned the appropriateness of the requirement that material changes to the prospectus must be made generally by post-effective amendment, rather than by prospectus under Rule 424(c).[41]

Commentator opposition to the proposed use of post-effective amendments to reflect material changes generally rested upon two arguments. First, commentators believed that updating by post-effective amendment resulted in unnecessary expense and delay.[42] Commentators further observed that the registration statement normally will be updated annually pursuant to Section 10(a)(3) of the Securities Act and subparagraph (a)(2)(ii) of the proposed Rule, so that a prospectus used in a shelf offering would not remain unchanged for an inappropriately long period of time. The prospectus also would remain subject to the liability standards of Section 12(2) of the Securities Act [15 U.S.C. 771(2)].[43] Several commentators also pointed out that, under current practice, stickers are often used to disclose material developments.

The second line of comments centered upon the fact that currently no guidelines or instructions delineate when updating may be accomplished by post-effective amendment or by sticker. These commentators recommended that the Commission take some rulemaking action, in Rule 462A or elsewhere, to clarify the situation. Also, several commentators objected to subparagraph (a)(2)(i) as proposed because it seemed to require specific Commission permission before a sticker could be used. They explained that such a requirement is contrary to present practice and would seem to impose new delays upon the updating process.

The updating requirements of proposed Rule 462A have been revised and consolidated in response to the comments received and further Commission analysis. The Commission is now proposing that registrants undertake to file post-effective amendments under the following circumstances: (1) to include any prospectus required by Section 10(a)(3) of the Securities Act;[44] (2) to reflect any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;[45] and (3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, including (but not limited to) any addition or deletion of a managing underwriter other than as a co-manager.[46]

The first undertaking regarding prospectuses required by Section 10(a)(3) of the Securities Act reflects current staff practice and received no adverse comment when proposed in the original version of Rule 462A.

The second undertaking, to present fundamental changes to information in the registration statement as a post-effective amendment, is a refinement of the initial proposal made in proposed Rule 462A. The Commission continues to believe that the filing of a post-effective amendment is appropriate in certain instances in order to insure full statutory liability for the information disclosed and to afford the Commission's staff an opportunity to review that disclosure in appropriate cases. However, the Commission also is aware that staff practice concerning the filing of post-effective amendments and stickers, for all registration statements, has been somewhat flexible depending on the nature of the information to be disclosed or modified and the ability to reflect that information in a short sticker to the prospectus. The Commission wishes to preserve that flexibility within the context of a shelf registration statement and also believes that a detailed listing of the situations in which post-effective amendments or stickers must be used is neither feasible nor desirable. Therefore, the proposal has been revised to eliminate any requirement that Commission permission is needed before a sticker can be used and to raise the threshold for requiring the filing of a post-effective amendment to those facts and events that represent fundamental changes to the information in the registration statement.

The use of the term "fundamental" is intended to reflect more accurately current staff practice under which post-effective amendments are filed when major and substantial changes are made to information contained in the registration statement.[47] Material changes that can be accurately and succinctly stated in a short sticker would continue to be permitted. While many variations in matters such as operating results, properties, business, product develoment, backlog, management and litigation ordinarily would not be fundamental, major changes in the issuer's operations, such as significant acquisitions or dispositions, would require the filing of a post-effective amendment.[48] Also, any change in the business or operations of the registrant that would necessitate a restatement of the financial statements always would be reflected in a post-effective amendment.[49] At the same

[39] *In re United Combustion Corporation*, 3 S.E.C. 1062, 1063 (1938).

[40] *See In re Shawnee Chiles Syndicate*, 10 S.E.C. 109, 113–14 (1941); Hodes, "Shelf Registration: The Dilemma of the Securities and Exchange Commission," 49 Va. L. Rev. 1106 (1963); 46 FR at 87.

[41] Amendments reflected in such prospectuses also are called "stickers" or "prospectus supplements."

[42] The use of post-effective amendments was used to involve delays because such amendments must be filed with the Commission and declared effective under Section 8(c) of the Securities Act [15 U.S.C. 77h(c)]. Also, each such amendment is deemed to be a new registration statement and liability attaches to the entire prospectus as of the date of the post-effective amendment. *See* proposed Item 512(a)(2) of Regulation S–K, as discussed *infra*.

[43] Section 12(2) of the Securities Act imposes liability upon any person who offers or sells a security by means of a prospectus (which would include a sticker) or oral communication which contains or omits to state a material fact unless such person can prove that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

[44] This is proposed as Item 512(a)(1)(i) of Regulation S–K.

[45] This is proposed as Item 512(a)(1)(ii) of Regulation S–K.

[46] This is proposed as Item 512(a)(1)(iii) of Regulation S–K.

[47] The proposal also reflects the fact that numerous small changes to information in the registration statement can cumulatively become fundamental. *Cf. In re Franchard Corporation*, 42 S.E.C. 163, 184–85 (1964).

[48] Similarly, a change in the registrant's capital structure caused by sales of securities under the shelf registration statement could, if sufficiently large, be such a fundamental change.

[49] *See also* the undertakings required by the staff in connection with a shelf registration for a continuing acquisition program. Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351

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time, pursuant to the undertaking, a registrant using a shelf registration statement for a series of debt offerings would be able to sticker the prospectus to reflect changes in interest rates, redemption prices and maturities. Although such information clearly is material to any investor in the securities, it does not represent a fundamental change in the information set forth in the registration statement when all other details remain the same.

The third undertaking—concerning additions to or changes in the proposed plan of distribution—has been included as a separate provision to reflect the unique characteristic of a shelf registration statement. By definition, a shelf offering does not include one in which all the securities are offered immediately upon effectiveness of the registration statement but, rather, is intended to occur, in whole or in part, at some time in the future. In that case, the registrant may be unable to provide a full description of the proposed plan of distribution in the initial registration statement, or that plan may change over time. Accordingly, the registrant must undertake to file a post-effective amendment to reflect any new material information about the plan of distribution or any material change in the plan already described in the registration statement.

Under the proposed provision, a change from an underwriting on a "best efforts" basis to any variety of "firm commitment" underwriting, for example, always would necessitate the filing of a post-effective amendment. Also, a registration statement containing no set plan of distribution or stating generally that securities would be sold in a variety of fashions could be declared effective; however, no sales could be made until the material aspects of the plan were filed as a post-effective amendment. [50]

At the same time, as noted in the Guides Release,[51] the plan of distribution for many types of shelf offerings ordinarily does not change over time and, therefore, can be disclosed adequately in advance of the actual transaction.[52] In those situations, a post-effective amendment would not be necessary.

In order to provide additional guidance to registrants, the undertaking makes clear that a post-effective amendment always is required to reflect the addition or deletion of a managing underwriter other than as a co-manager.[53] In using the term "managing underwriter," the Commission is referring to that underwriter (or underwriters) who, by contract or otherwise, deals with the issuer, organizes the selling effort and represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered and arranging for appropriate stabilization activities, if any.[54] If only one underwriter is involved in an offering, that entity also would be deemed to be the "managing underwriter" for purposes of this undertaking; also, if there were a small number of underwriters performing substantially the functions previously described, and if no one underwriter were acting for the other, each would be a "managing underwriter."

The Commission specifically requests comment on whether the term "managing underwriter" is sufficiently clear based upon the above discussion or whether a definition should be included in Rule 462A or in Regulation C generally. If a definition is recommended, the Commission requests that the commentator submit a specific suggestion.

Given the important role played by this category of underwriter, the Commission believes that a change in managing underwriter, other than the addition or deletion of a co-manager, would represent a material alteration to the proposed plan or distribution, even if the actual method of distribution remained the same.[55] This information would be especially critical when the registrant changed from an underwritten offering to one made without the involvement of an underwriter, or vice versa.[56] The undertaking to file a post-effective amendment (rather than a sticker to the prospectus) provides a formal mechanism to facilitate underwriter involvement with the registration statement when such a material change in the plan of distribution occurs.

2. *Exceptions to the Undertakings to File Post-Effective Amendments.* It should be noted that the undertakings to file post-effective amendments are not in force under two sets of circumstances. The first exception applies to all issuers and the second is peculiar to registration statement filed on certain forms.

First, the undertaking to file a post-effective amendment of any kind is operative only when offers or sales of securities are being made. Accordingly, there is no requirement that the registrant maintain a so-called "evergreen" prospectus irrespective of the existence of offers and sales of securities. For example, if securities to be issued upon the exercise of an option or warrant have been registered pursuant to proposed Rule 462A, and the market price of those securities is substantially below the exercise price so that exercise would not occur, the registrant need not update the registration statement. However, the Commission would expect any

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(available January 17, 1973). These undertakings would be subsumed within the undertaking to file post-effective amendments to reflect fundamental changes.

[50] Nonetheless, if the registration statement contained a full description of several alternative methods of distribution, including the names of any underwriters required to be named, the method of compensating those underwriters and the method by which the offering price would be determined, so that the only missing information consisted of numerical details such as price and underwriting spread, a post-effective amendment would not be required pursuant to the undertaking. In such an instance, the registrant could sticker the prospectus to reflect the final terms of the transaction. This situation might occur, for example, when a registrant generally intended to sell securities through an agent directly into the marketplace but wished to reserve the option to sell using other techniques, such as those envisioned by Rules 391 and 392 of the New York Stock Exchange, Inc. In those situations, for example, it would be appropriate to indicate the purchase price from the issuer (the equivalent of the underwriting spread) and the offering price in the prospectus sticker. It must be emphasized, however, that a post-effective amendment ordinarily would be required where the registrant was unable to provide all other information about each offering plan, apart from price and spread.

On the other hand, if, as is currently the case in many registration statements for secondary offerings, the sellers' plan of distribution provides for sales of securities in ordinary brokerage transactions, no post-effective amendment would be required to name the broker-dealers used, even though such persons might be deemed to be statutory underwriters under the Securities Act. *See* discussion of treatment of statutory underwriters, *infra*.

[51] *See* 46 FR at 90 n. 86.

[52] For example, shares are purchased through a dividend or interest plan at a price set in accordance with a predetermined formula. Also, a continuous offering of securities into an existing trading market at the current market price would require no further description if the agencies for sale and proposed method of sale were described fully in the initial registration statement.

[53] Thus, if one of two managing underwriters were deleted, or if a second manager were added to one already present, a post-effective amendment would not be required. Generally, the Commisson would expect that the addition or deletion of a co-manager or any other participating underwriter would be reflected in a sticker to the prospectus.

[54] *See* L. Loss, *Securities Regulation* at 167–70 [2d ed. 1961].

[55] The critical role played by underwriters in an offering of shelf-registered securities is further reflected in the addition to proposed Rule 462A of a requirement that at the market offerings of equity securities must be made through an underwriter or underwriters acting as principal(s) or agent(s) of the issuer and named in the prospectus. *See* discussion of at the market offerings, *infra*.

[56] Several commentators also raised issues regarding underwriters' ability to verify information contained in a shelf registration statement to satisfy their due diligence obligation. Such concerns are discussed in securities Act Release No. 6335, *supra*.

registration to be cautious in determining that the duty to update had been suspended.

The second exception to the duty to update occurs in the case of a registration statement filed upon proposed Form S–3 or existing Form S–8 where the information required to be included in a post-effective amendment by the undertakings in proposed Item 512(a)(1)(i) and (a)(1)(ii) of Regulation S–K—prospectuses required by Section 10(a)(3) of the Securities Act and fundamental changes in the information set forth in the registration statement—is instead contained in periodic reports filed under the Exchange Act and incorporated by reference in the registration statement.[57] The exception does not extend to the requirement to file a post-effective amendment to reflect material changes in the proposed plan of distribution.[58] Such information always must be reflected in the prospectus itself.

This exception had been included in the original version of proposed Rule 462A only insofar as it applied to proposed Form S–3 (then denominated Form A). The commentators generally approved of the provision but suggested that it be expanded to two other forms that utilize incorporation by reference of Exchange Act reports—Form S–8 and proposed Form S–2 (then called Form B). The Commission agrees that inclusion of Form S–8 in the exception is appropriate because Form S–8, like proposed Form S–3, incorporates by reference not only past Exchange Act reports but all such reports that are filed subsequent to the effective date of the registration statement.[59] In contrast, proposed Form S–2 does not incorporate by reference those subsequent reports. Therefore, the duty to update cannot be satisfied by those documents that are incorporated by reference in proposed Form S–2; instead, post-effective amendments must be filed pursuant to the undertaking.

One further change has been made concerning updating through incorporation by reference of Exchange Act reports. The original version of the provision as proposed stated that no post-effective amendment to a proposed Form S–3 (then Form A) registration statement need be filed if the information was contained in Exchange Act periodic reports incorporated by reference in the registration statement unless the information actually included in the prospectus contained a material misstatement of fact or omitted to state a material fact. In that case, the prospectus itself would have to be updated by post-effective amendment or sticker. This provision has been removed because it did no more than restate the issuer's obligation not to use a prospectus that has been rendered materially false or misleading by events subsequent to the effective date of the registration statement.[60] Furthermore, the issue is not unique to shelf registration but, rather, arises from the use of registration forms, such as Form S–8 and proposed Form S–3, which permit incorporation by reference of subsequently filed Exchange Act reports.[61]

C. *Liability Protection Under the Securities Act.* No commentators addressed the proposal that registrants must undertake that each post-effective amendment "shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof." This undertaking reflects the Commission's view of the law in this area and also the longstanding staff practice of requiring the inclusion of such an undertaking in many shelf registration statements. As noted in the Guides Release, it has been included as the third condition to the expanded use of shelf registration for reasons of clarification and certainty.[62] This undertaking has been retained but has been moved to proposed Item 512(a)(2) of Regulation S–K.

D. *Exemptions From the Rule.* Rule 462A, as proposed, did not apply to registration statements filed by investment companies registered under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a–1 et seq.]. As indicated in the Guides Release, registered investment companies were exempted from the proposal in recognition of the specific provisions for continuous registration contained in the 1940 Act. One commentator rightly observed that those provisions apply only to securities issued by a face-amount company or redeemable securities issued by an open-end management company or unit investment trust.[63] Accordingly, proposed Rule 462A has been changed to exempt only registration statements filed by those entities. This amendment would continue to permit the use of a shelf registration statement for offerings of the securities of closed-end investment companies,[64] as well as for offerings by business development companies.[65]

The Guides Release also requested comment upon whether or not the proposal should apply to foreign governments and political subdivisions thereof.[66] Although the commentators that addressed this issue saw no need to treat these issuers differently from domestic issuers, most were aware that the Commission had recently published as a release a staff interpretative letter setting forth procedures to be followed by foreign governmental issuers in using a shelf registration that differed somewhat from Rule 462A as proposed

[57] In the case of a financial statement appearing in a periodic report that is incorporated by reference into the registration statement, Rule 439 under the Securities Act [17 CFR 230.439] and the proposed amendments thereto assure that the requisite written consent of the independent accountant is furnished to the Commission. *See* the Regulation C Release.

[58] Proposed Item 512(a)(1)(iii) of Regulation S–K.

[59] The Commission is aware that the staff has taken a flexible position concerning the updating of information contained in Form S–8, and nothing in proposed Rule 462A is intended to alter those practices. *See* generally Securities Act Release Nos. 6202 (April 2, 1980) [45 FR 23653] and 6281 (January 5, 1981) [46 FR 8446]; Letter re Crocker National Corporation (September 25, 1980); Letter re Allis-Chalmers (March 20, 1981).

[60] *See* Section 12(2) of the Securities Act.

[61] *See* Securities Act Release No. 6331, *supra.*

[62] In addition, the Commission is now proposing to require that each registration statement upon proposed Form S–3 or Form S–8 contain an undertaking that each filing of the registrant's annual report pursuant to Section 13 or Section 15(d) of the Exchange Act also shall be deemed to be a new registration statement and that the offering of such securities at that time shall be deemed the initial bona fide offering thereof. *See* proposed Item 512(b) of Regulation S–K in the Regulation S–K Release.

[63] Section 24(e) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(e)].

[64] Primary and secondary offerings by closed-end investment companies are registered on Form N–2 [17 CFR 239.14, 17 CFR 274.11a]. Although Form S–16 also can be used to register secondary offerings of such companies, closed-end investment companies would not be permitted to file on proposed S–3. *See* Securities Act Release No. 6331, *supra.*

[65] The Small Business Investment Incentive Act of 1980 [Pub. L. No. 96–477], *inter alia*, amended the 1940 Act by establishing a new system of regulation for certain investment companies called "business development companies" ("BDCs"). A BDC is defined as a domestic, closed-end company that is operated for the purpose of making investments in small and developing businesses and financially troubled businesses; that offers significant managerial assistance to its portfolio companies; and that has notified the Commission of its election to be subject to the system of regulation established by Section 55 through 65 of the 1940 Act. Such companies are required to comply with the periodic reporting requirements under the Exchange Act and are not registered as investment companies. There currently is no specific Securities Act registration form for BDCs; however, the staff has requested that these companies register on Form N–2. Investment Company Act Release No. 11703 (March 26, 1981) [46 FR 19459].

[66] *See* 46 FR at 90. These issuers register securities pursuant to Section 10(a)(2) of the Securities Act by filing a registration statement containing the information specified in Schedule B of the Securities Act, as well as additional statistical information required by the staff regarding the issuer, its country, economy and government.

and also as modified today.[67] In that release, the staff indicated that it viewed the procedures described therein as an experiment and that, after further experience, it might recommend that the Commission codify the interpretation in a rule. The Commission believes that the staff has not yet had sufficient experience with the use of shelf registration by foreign governments and political subdivisions thereof and that, at this time, proposed Rule 462A should not include these issuers.[68] Instead, foreign governmental issuers may continue to use the procedures set forth in the staff interpretive letter.

IV. At The Market Offerings

In the Guides Release, the Commission recognized that the adoption of proposed Rule 462A would expand for the first time the availability of shelf registration to certain kinds of primary offerings, particularly at the market offerings of equity securities, and that such offerings raise novel market and disclosure concerns. The Commission requested comment upon the advisability of limiting the availability of the Rule for such offerings and asked specifically whether at the market equity offerings should be limited to certain issuers which exceed the eligibility requirements for use of proposed Form A or should be limited to offerings that are sold by or through a broken-dealer or a limited, named group, as agent(s) or principal(s).[69] The Commission also asked a series of questions concerning the market implications of these forms of shelf offerings, particularly under the anti-manipulative provisions of the Exchange Act and the rules thereunder, Rules 10b-2, 10b-6 and 10b-7 [17CFR 240.10b-2, 10b-6 and 10b-7].[70]

A. Requirement of Named Underwriters

All commentators unanimously opposed any limitation on at the market offerings based upon outstanding float or value in the market or any limitation upon timing or amounts of sales, as had been suggested in the Guides Release. Commentators argued that such limitations were unnecessary, particularly in view of the issuer's incentive to preserve an orderly trading market in its securities. Most noted that such limitations would impair issuer flexibility in effecting sales of its securities pursuant to a shelf registration and that such flexibility is the issuer's primary reason for utilizing this offering technique.[71] In addition, commentators argued that disclosure, including disclosure of the plan of distribution and any resultant market overhang,[72] generally would constitute sufficient protection with respect to most manipulative concerns that might arise.

Nonetheless, several commentators did recommend the imposition of certain conditions upon the availability of shelf registration for an at the market offering. Those conditions included requiring the presence of an underwriter or underwriters, as well as limiting the use of shelf registration to issuers eligible to use proposed Form S-3 or an even more select group, or to issuers who have complied with the reporting requirements of the Exchange Act for some minimum period of time.

At this time, the Commission believes that the expansion of the availability of shelf registration for novel, at the market offerings of equity securities by the issuer must be made with due deliberation and concern for the effect of such offerings upon the public and the market place. The Commission agrees with the commentators that the involvement of an underwriter can provide a desirable discipline upon such offerings of equity securities into an existing trading market.[73] The presence of an underwriter also helps to ensure that complete accurate and current disclosure is made to investors in the prospectus and that the prospectus delivery requirements of the Securities Act are met. The Commission also believes that the other limitations upon the availability of the proposed Rule, suggested in the Guides Release and by the commentators, are not necessary or appropriate at this time provided that an underwriter is directly involved in the offering.

Accordingly, the Commission is proposing, in new subparagraph (a)(3) of proposed Rule 462A, that, in the case of a registration statement pertaining to a primary at the market offering of equity securities, those securities must be sold through an underwriter or underwriters, acting as principal(s) or agent(s) for the issuer, and such underwriter(s) must be named in the prospectus which is part of the registration statement.[74] The proposed subparagraph also defines an "at the market offering" as an offering of securities into an existing trading market for outstanding shares of the same class of securities at other than a fixed price on or through the facilities of a national securities exchange or to a market maker otherwise than on an exchange.

Under proposed subparagraph (a)(3), a registration statement providing for an at the market offering of equity securities registered therein could be declared effective without a named underwriter or underwriters if such at the market offering would not begin immediately following the effective date of the registration statement. Offerings of securities under the registration statement could then by made without underwriter involvement, provided that such offerings were not made at the market. However, before any at the market offering of equity securities actually occurred, the registrant would have to enter into formal arrangements with at least one underwriter and would

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[67] *See* Securities Act Release No. 6240 (September 17, 1980) [45 FR 61609]. In particular, the staff imposed certain additional prospectus-delivery requirements upon the registrant and limited the availability of the shelf registration to securities which the registrant proposed to sell in one year.

[68] However, the above discussion does not affect the ability of foreign private issuers to utilize shelf registration procedures under proposed Rule 462A wherever appropriate.

[69] 46 FR at 90.

[70] The Commission specifically solicited comment on

(1) whether and to what extent there is a potential for manipulation in connection with issuer sales in an at the market offering;

(2) whether and to what extent any such manipulative potential would differ from that with respect to market transactions not involving the issuer;

(3) whether any potential concerns could be adequately dealt with by disclosure of the plan of distribution and any resulting market overhang;

(4) whether and what limitations, if any, should be imposed on at the market offerings on the basis of outstanding value or float in the market for the securities; and

(5) whether and what conditions, if any, should be imposed upon the timing and amounts of sales in an at the market offering.

45 FR at 90.

[71] Commentators consistently pointed out that shelf registration provides issuers with the opportunity to take immediate advantage of increases in market price be selling securities without the delays that often accompany the conventional registration process.

[72] These disclosure provisions are proposed in Items 508 and 201(a)(3) of Regulation S-K respectively. *See* the Regulation S-K Release.

[73] *Cf. In re Hazel Bishop Inc.*, 40 S.E.C. 718, 729-32 (1961).

[74] Registrants should be aware that, where the naming of one or more underwriters in the prospectus is required by proposed subparagraph (a)(3), at least one of those underwriters will be deemed to be a "managing underwriter" for purposes of the undertaking in proposed Item 512(a)(1)(iii) of Regulation S-K to file a post-effective amendment to reflect the addition or deletion of a managing underwriter other than as a co-manager.

In addition, proposed Section 508 of Regulation S-K sets forth required disclosure provisions concerning "principal underwriters" of the issue. Rule 405(p) [17 CFR 230.405(p)] defines "principal underwriter" as any underwriter of the security that is in privity of contract with the issuer of that security. Any underwriting arrangement entered into to satisfy proposed subparagraph (a)(3) generally would cause the underwriter to be a "principal underwriter" subject to the disclosure requirements of proposed Section 508.

be required to file a post-effective amendment naming that underwriter.[75]

Proposed subparagraph (a)(3) is limited to offerings of equity securities in recognition of the fact that debt securities are priced to a substantial extent according to interest rates and other factors.

B. Treatment as Statutory Underwriter

The question of what entities, whether or not named in the registration statement or in privity of contract with the registrant or selling security holder, meet the statutory definition of an "underwriter" is not unique to offerings of shelf-registered securities.[76] However, several commentators observed that proposed Rule 462A, by permitting for the first time a direct distribution of securities by an issuer into an existing trading market over an extended period of time, raises the issue of underwriter status in a novel, unexplored situation.[77] These commentators particularly were concerned about the status of market professionals trading on the floor of a stock exchange, such as exchange specialists or exchange members, who might deal in securities that are registered for an at the market offering.

In light of these comments, the Commission has examined the issues raised and tentatively has arrived at the following conclusions concerning the status of a market professional as an underwriter in an at the market offering of equity securities by an issuer under proposed Rule 462A. The Commission is publishing those views for the purpose of soliciting public comment on these important issues.

The Commission believes that any market professional—a market maker, specialist, or ordinary broker-dealer—who purchases a registered security as principal from the registrant [78] or who sells that security for the registrant as agent ordinarily would be deemed a statutory underwriter under Section 2(11) of the Securities Act even in the absence of a specific written agreement between the issuer and that market professional. Thus, the underwriter(s) required, under proposed subparagraph (a)(3) of the Rule, to be named in the prospectus for a primary at the market equity offering, and any other underwriter required to be named by proposed Item 508 of Regulation S-K,[79] would clearly be statutory underwriter(s). However, in a primary at the market offering of equity securities under the proposed Rule, any market professional that is not identified in the prospectus, that does not deal with the registrant, that purchases from or acts as agent only for persons other than the registrant in the purchase of the securities in the ordinary course of its business, and that doe not enter into any special arrangements with or receive any special compensation [80] for effecting the transaction from the issuer or any underwriter of the offering ordinarily would not be viewed as an underwriter of those securities.

Accordingly, an exchange member or specialist effecting a transaction in the shelf-registered security with an underwriter who is in privity with the registrant generally would not be deemed to be an underwriter if the member or specialist performed its usual functions and had not entered into any special selling arrangements with the registrant or the underwriter. The same would be true in the case of an over-the-counter market maker who did not buy from the registrant. In a similar vein, a broker-dealer could solicit buy orders from its customers for a security subject to such a shelf registration statement without being deemed an underwriter of that security upon executing the trade, as long as such broker-dealer limited itself to its ordinary business activities and had no special arrangements with the underwriters or issuer.

C. Application of the Anti-Manipulative Rules

The commentators generally agreed that continuous at the market offerings might raise manipulative concerns. In their view, however, these concerns are no different than those that may arise in connection with similar secondary offerings. The commentators stated that generally it would be in the best interests of the issuer, and of any broker-dealer acting with, or on behalf of, the issuer, not to disrupt orderly market processes in connection with these types of primary offerings.

The Commission does not at this time perceive a need for special rules to prevent manipulation in connection with at the market shelf offerings. The current framework of substantive anti-manipulative rules, together with the existing disclosure requirements, appears to provide sufficient protection against market abuses.[81] However, as indicated earlier, in view of the novel issues which are posed by primary at the market shelf offerings, the Commission will monitor offerings pursuant to proposed Rule 462A, if it is adopted, and will consider further measures if they prove necessary.

In addition to responding to general manipulative concerns under the Exchange Act and addressing potential limitations on primary at the market offerings, many commentators raised specific questions concerning the applicability of Rule 10b-6 to these offerings.[82]

Some commentators were concerned that Rule 10b-6, and present staff interpretations of certain of its provisions, would interfere unduly with at the market offerings permitted by

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[75] *See* proposed Item 512(a)(1)(iii) of Regulation S-K.

[76] Section 2(11) of the Securities Act defines an underwriter as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such underwriting, or participates or has a participation in the direct or indirect underwriting of any such undertaking."

[77] Although the factors utilized to determine whether a person is an underwriter for purposes of the Securities Act are not the same as those used to determine whether one is an underwriter or otherwise a participant in a distribution for purposes of Rule 10b-6 under the Exchange Act [17 CFR 20.10b-6], the commentators raised an analogous issue with respect to Rule 10b-6. It should be noted, however, that these issues are not novel. They have existed under both the Securities Act and the Exchange Act for some time in connection with secondary at the market offerings of securities.

[78] The Commission notes that Rule 113 of the New York Stock Exchange, Inc. prohibits purchases or sales of securities by the specialist directly from or to the issuer of that security.

[79] *See* the Regulation S-K Release.

[80] Section 2(11) of the Securities Act provides that the term "underwriter" does not include "a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission."

[81] The existing regulatory framework includes rules adopted both by the Commission and the self-regulatory organizations. The Commission is especially interested in receiving comment from the national securities exchanges and other self-regulatory organizations concerning the impact that shelf-registered primary at the market offerings might have on existing exchange and over-the-counter markets. In particular, the Commission requests comment on whether the adoption of proposed Rule 462A would necessitate revisions to existing rules and practices imposed on members and member firms or to disclosure and other requirements currently imposed on issuers, *e.g.*, through listing standards of stock exchanges and for the National Association of Securities Dealers Automated Quotation System.

[82] Rule 10b-6 provides in relevant part:

(a) It shall constitute a "manipulative or deceptive device or contrivance" as used in Section 10(b) of the Act for any person,

(1) who is an underwriter or prospective underwriter in a particular distribution of securities, or

(2) who is the issuer or other person on whose behalf such a distribution is being made, or

(3) who is a broker, dealer, or other person who has agreed to participate or is participating in such a distribution,

directly, or indirectly, * * * either alone or with one or more persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right until after he has completed his participation in such distribution.

proposed Rule 462A. In particular, they argued that the application of Rule 10b–6 would inhibit the participation of various market professionals in the offerings and, therefore, that Rule 10b–6 should be amended to clarify the obligations of underwriters and other participants in a shelf-registered primary offering. Other commentators, however, noted that existing interpretations of Rule 10b–6 could be applied to at the market offerings without undue burden but suggested that the Commission clarify the Rule's applicability to various situations that might arise that would be peculiar to a primary shelf offering.

If proposed Rule 462A is adopted, the Commission believes that the application of existing interpretations of Rule 10b–6 will not interfere unduly with at the market offerings by issuers. To the extent that these offerings may raise novel questions under Rule 10b–6 concerning the permissible scope of market activity by participants during such an offering, the Commission believes that it will be possible, either on a case-by-case basis, by interpretative release, or by amendment to the Rule, to facilitate such offerings in conformity with the anti-manipulative purposes of Rule 10b–6.

Several commentators suggested that the Commission define the term "distribution" for purposes of Rule 10b–6, particularly in the context of a shelf-registered offering. The Commission believes that the criteria traditionally utilized in determining whether a distribution exists appear to be equally relevant to primary shelf offerings on an at the market basis.[83] Under those criteria the issuer generally would be engaged in a distribution for purposes of Rule 10b–6 from the time it made the initial decision to go forward with the offering. Thus, commencing at or before the filing of a shelf registration statement, the issuer and its affiliates ordinarily would be prohibited from bidding for or purchasing the security that is the subject of the distribution, any security of the same class and series, or any right to purchase any such security, unless the bid or purchase was specifically excepted or exempted from the Rule.[84] However, the Commission recognizes that, in the context of a shelf registration for an offering or offerings to be made in the future, including a registration statement that permits a variety of selling alternatives and efforts in the issuer's discretion, it may be argued, depending on the facts, that no decision to offer occurs until a time after the filing of the registration statement. The Commission specifically solicits comment on when a distribution should be deemed to commence for purposes of Rule 10b–6 in connection with a shelf registration statement pursuant to proposed Rule 462A.

The Commission also is aware that there may be periods of time during the life of a shelf registration when the issuer has determined neither to engage in any selling efforts nor to make any sales of the securities registered.[85] During those periods of time, it may be appropriate to permit issuers and their affiliates to make purchases of the issuer's securities by exemptions from Rule 10b–6. The Commission solicits comment on what kinds of conditions should be imposed on such purchases.[86]

In addition, whenever the issuer makes any arrangements with any broker-dealer to participate in the offering of the securities registered on the shelf (*e.g.*, as selling agent), that broker-dealer would become a participant in the distribution from the time it agreed to participate,[87] and it would be subject to the prohibitions of the Rule.[88] That broker-dealer would have completed its participation in the distribution when its agreement with the issuer terminated or when it had sold all securities it had agreed to offer or sell, whichever occurred later. Nevertheless, it may be appropriate for a broker-dealer that has a continuing agreement with the issuer to participate in the shelf-registered offering of securities to bid for or purchase securities during periods in which all sales and selling efforts had been suspended.[89]

A major subject addressed by the commentators was the potential liability under Rule 10b–6 of market makers, block positioners or specialists who, without any prior arrangements with the issuer, bought shelf-registered securities either directly from the issuer or from a broker-dealer, or a group of broker-dealers, acting for the issuer either as agent or principal. Some commentators

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[83] In *Collins Securities Corporation*, Securities Excurities Exchange Act Release No. 11766 (October 23, 1975), 8 SEC Docket 250, the Commission stated:

Rule 10b–6 * * * is designed to prevent manipulation in the markets. To that end, it precludes a person from buying stock in the market when he is at the same time participating in an offering of securities which is of such a nature as to give rise to a temptation on the part of that person to purchase for manipulative purposes. The term distribution in Rule 10b–6 should therefore be interpreted to identify situations where that temptation may be present. Our opinion in *Bruns Nordeman* attempted to define distribution so as to identify such circumstances.

8 SEC Docket at 256. The Commission said in *Bruns Nordeman & Company*, 40 S.E.C 652 (1961), that a distribution for purposes of Rule 10b–6 is to be distinguished from ordinary trading transactions and other normal conduct of a securities business on the basis of the magnitude of the offering and particularly on the basis of the selling efforts and selling methods utilized. 40 S.E.C. at 660

[84] *See* Rule 10b–6(a)(3) and (g).

[85] The Commission solicits comment on how and under what circumstances an issuer would determine to suspend all selling efforts of shelf-registered securities and whether a press release or other public announcement of such a suspension should be required as a condition of exempting purchases from Rule 10b–6 while the offering is suspended.

[86] The exemption could be conditioned on compliance with the limitations of proposed Rule 13e–2 (as proposed in Securities Act Release No. 6248 (October 17, 1980) [45 FR 70890]), if adopted, or with the similar requirements set forth in Appendix C (2 Fed. Sec. L. Rep. (CCH) ¶22,726). In addition, the exemption might require a "cooling off" period (*e.g.*, ten business days) after cessation of purchases and prior to the recommencement of sales of shelf-registered securities. The Commission solicits comment on (i) whether a ten business day or other period is appropriate in all or any circumstances, (ii) whether the conditions of proposed Rule 13e–2 or Appendix C would be appropriate or too stringent in this context, and (iii) whether purchases by affiliates of the issuer should be treated differently from purchases by the issuer.

[87] Of course, under existing interpretations of Rule 10b–6, if a broker-dealer agreed to participate in an offering of securities prior to its commencement, the broker-dealer would not be required to cease bidding for or purchasing the security being offered until the later of ten days before the proposed commencement date of the offering or the time it agreed to participate. *See* Rule 10b–6(a)(3)(xi).

[88] A broker-dealer that has an agreement or understanding with the issuer to participate in an offering of this kind may have the incentive to make purchases in order to facilitate the distribution. Of course, such broker-dealers could effect transactions that were excepted from Rule 10b–6. *See* Rule 10b–6(a)(3).

One commentator suggested that a broker-dealer that is named in a registration statement should not be deemed in all cases to be a participant in the issuer's distribution. The fact that such broker-dealer has already been chosen by the issuer, however, implies at the very least some agreement to sell the issuer's securities even though such sales, or the broker-dealer's participation, may be at a future date.

A broker dealer with no continuing agreement with the issuer but which the issuer invites, at any one time, to participate in selling as agent or principal securities that are shelf-registered would be subject to the prohibitions of Rule 10b–6 at the time it agreed to participate in the distribution. The Commission notes that this position does not differ in any way from that taken in more conventional underwritten offerings in determining when an underwriter, selling dealer or other participant has become involved in a distribution for purposes of Rule 10b–6.

[89] As in the case of issuer purchases during this period, purchases by the broker-dealer ordinarily could be effected only pursuant to an exemption from Rule 10b–6. Such an exemption again might be conditioned on a "cooling off" period of, possibly, ten business days after cessation of purchases and prior to the recommencement of any sales of shelf-registered securities. The Commission solicits specific comment on what period is appropriate and whether any exemptive relief for transactions to be effected by such a broker-dealer should be conditioned on any other limitations, such as limitations analogous to those contained in Appendix C or proposed Rule 13e–2. *See* n. 86, *supra*.

correctly understood the staff's present interpretive position under Rule 10b–6 to be that such market makers, block positioners or specialists are not automatically deemed to be participants in the issuer's distribution and, therefore, are not subject to Rule 10b–6 solely because they purchase securities from the issuer or broker-dealers acting for the issuer. Nevertheless, they noted that certain staff interpretive letters do not accord with this position and have never been formally rescinded.[90] These commentators suggested that a clear statement on the applicability of Rule 10b–6 to market professionals who purchase securities in connection with a primary shelf offering is necessary.[91]

The staff takes the position that, for purposes of Rule 10b–6, a market professional who does not have any prior agreement or understanding with the issuer should not be deemed to be a participant in the issuer's distribution pursuant to a shelf registration statement solely because it purchases, in the ordinary course of its business, securities that are registered on the shelf and are offered by the issuer or a broker-dealer acting for the issuer. Nevertheless, the Commission cautions such market professionals to examine carefully the manner in which they intend to dispose of those sercurities once they have purchased them against the traditional indicia of a Rule 10b–6 distribution in order to determine whether their resales might consitute a separate distribution for purposes of Rule 10b–6.

It is anticipated that, if proposed Rule 462A is adopted, issuers may choose to raise capital through a combination of conventional fixed price offerings and shelf-registered offerings. One commentator raised certain concerns with respect to the coordination of shelf-registered at the market offerings with separately registered conventional fixed price offerings. As a practical matter, it is doubtful that sales at the market pursuant to a shelf registration statement would be made at the same time that the issuer or its underwriters were engaged in a fixed price underwriting. Such sales might have a depressing effect on the market price of the security and, consequently, might adversely affect the pricing of the fixed price offering. Nevertheless, during times when the shelf registration statement is effective, but sales pursuant to it have been formally suspended, issuers may determine to go forward with conventional offerings. Under those circumstances, careful coordination would be necessary to avoid possible problems that may arise under Rules 10b–6 and 10b–7.[92] In order to eliminate those problems, it may be appropriate for the Commission to prohibit all sales or selling efforts in connection with an at the market shelf offering during the pendency of a fixed price offering until the end of a ten business day (or other) period after all stabilizing purchases in connection with the fixed price offering have ended or purchases to cover a syndicate short position have been completed. The Commission solicits specific comment on how an issuer and broker-dealers acting on behalf of an issuer could coordinate any fixed price offerings with a shelf-registered offering that contemplates sales at the market.

Another commentator raised the point that, because Rule 10b–6 prohibits inducements to purchase the security being distributed, broker-dealers who are deemed to be participants in a shelf-registered distribution of securities of a particular issuer would not be able to distribute any research concerning that issuer for as long as they continued to be participants in the distribution. This commentator argued that such an interpretation would interfere unduly with the duty of a broker-dealer to provide updated research to customers concerning issuers the broker-dealer previously had recommended. The Commission believes that present staff interpretations under Rule 10b–6 concerning research reports by participants in a distribution of securities would be equally applicable in the context of shelf-registered offerings. Generally, the staff has taken the position that research reports complying with Rule 139 under the Securities Act [17 CFR 230.139] [93] do not constitute prohibited inducements to purchase under Rule 10b–6. Thus, broker-dealers with a continuing agreement to participate in a shelf-registered offering generally would be able to distribute research which did not contain specific recommendations with respect to that issuer. If a broker-dealer did not have a continuing agreement with the issuer, but participated in the offering in a limited capacity, such as in connection with a single block transaction off the shelf, it would have to refrain from further dissemination of any specific recommendation that it had issued prior to being invited to participate in the distribution or from issuing further recommendations, until its participation in the distribution ended.

Finally, one commentator suggested that the staff consider expanding its interpretive position under Rule 10b–6 with respect to bids for or purchases of debt securities by participants in a distribution of a security of the same class and series, particularly in the context of a shelf registration of debt securities to be offered over a period of time at different interest rates and maturity dates.[94] The Commission solicits specific comment on whether the staff interpretive position should be expanded, how it could be expanded, and what type of further limitations, if any, would be appropriate.

V. Request for Comment

Any interested persons wishing to submit written comments upon proposed Rule 462A and the related undertakings proposed in Item 512(a) of Regulation S–K, as well as on other matters discussed in the Release or which might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment concerning possible revisions or amendments to any other rules under the Securities Act, such as those relating to the delivery of a statutory prospectus,[95] that may be necessary or appropriate to further the objectives of proposed Rule 462A.

The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition that is not necessary or appropriate in furtherance of the

[90] *See, e.g.*, Letter re *Victory Markets* (September 21, 1972) and Letter re *Continental Coffee* (March 3, 1972).

[91] Commentators recognized, however, that the market maker or block positioner, even if not a participant in the issuer's distribution, might be involved in a separate distribution for purposes of Rule 10b–6 depending on how it disposed of the securities it had acquired.

[92] For example, although Rule 10b–6 does not prohibit concurrent distributions, sales at the market under certain circumstances might constitute inducements to purchase securities being distributed in a conventional offering, in violation of Rule 10b–6. Similarly, stabilization of a fixed price offering pursuant to Rule 10b–7 might be deemed to constitute impermissible stabilization of an at the market offering in certain cases. *See* Rule 10b–7(g).

[93] Under Rule 139, the distribution or publication by a dealer of certain types of information, opinions or recommendations concerning an issuer are deemed not to constitute an offer for sale or offer to sell securities of that issuer, for purposes of Sections 2(10) and 5(c) of the Securities Act, even if the dealer is participating in an underwritten offering of the issuer's securities.

[94] *See* Letter re American Telephone and Telegraph Company (February 26, 1975), in which the Division of Market Regulation stated that it would not recommend that the Commission take enforcement action under Rule 10b–6 if dealers participating in a distribution of debt securities of an issuer bid for or purchased other outstanding debt securities of the same issuer so long as certain conditions were met.

[95] *See, e.g.*, Rules 153 and 174 under the Securities Act [17 CFR 230.153 and 230.174].

purposes of the Securities Act and the Exchange Act.

VI. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding § 230.462a to read as follows:

§ 230.462a Delayed or continuous offering and sale of securities.

(a) Sécurities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided That*

(1) The registration statement pertains to:

(i) Securities in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration statement by or on behalf of the registrant, a subsidiary of the registrant of a person of which the registrant is a subsidiary; or

(ii) Securities which are to be offered or sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary; or

(iii) Securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant; or

(iv) Securities which are to be issued upon the exercise of outstanding options, warrants or rights; or

(v) Securities which are to be issued upon conversion of other outstanding securities; or

(vi) Securities which are pledged as collateral; or

(vii) Securities which are registered on Form S–12 [17 CFR 239.19] or Form C–3 [17 CFR 239.5].

(2) The registrant furnishes the undertakings required by Item 512(a) of Regulation S–K [17 CFR 229.512(a)].

(3) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant, the securities so registered must be sold through an underwriter or underwriters, acting as principal(s) or as agent(s) for the issuer, and the underwriter or underwriters must be named in the prospectus which is part of the registration statement. As used in this paragraph, the term "at the market offering" means an offering of securities into an existing trading market for outstanding shares of the same class at other than a fixed price on or through the facilities of a national securities exchange or to a market maker otherwise than on an exchange.

(b) This section shall not apply to any registration statement pertaining to securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

2. By adding paragraph (a) to Item 512 of § 229.500 to read as follows:

§ 229.500 Registration statement and prospectus provisions.

* * * * *

Item 512. Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 462A Offerings.* Include the following if the securities are registered pursuant to Rule 462A under the Securities Act [17 CFR 230.462a]:

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, including (but not limited to) any addition or deletion of a managing underwriter other than as a comanager;

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S–3 [17 CFR 239.13] or Form S–8 [17 CFR 239.16b], and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

VII. Statutory Authority

This rulemaking is being promulgated pursuant to Section 7, 10 and 19(a) of the Securities Act [15 U.S.C. 77g, 77j and 77s(a)].

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rulemaking published in Securities Act Release No. 6334 (August 6, 1981), "Delayed or Continuous Offering or Sale of Securities," will not, if promulgated, have a significant economic impact on a substantial number of small entities for the following reasons. Although the proposed Rule would, by its terms, permit all registrants (including small entities) to use its procedures to conduct certain offerings which heretofore had been prohibited under the Securities Act, the types of offerings permitted by the proposed Rule ordinarily would not be utilized by small entities. Unlike larger issuers which have a constant need to raise additional capital, small entities generally make public offerings at a specific time and for a specific purpose and do not regularly enter the public markets on a continuous basis. Therefore, it is anticipated that the proposed Rule will not have a significant effect upon small entities because, generally, it will not be used by such entities.

Dated: August 6, 1981.

John S.R. Shad,

Chairman.

[FR Doc. 81–23441 Filed 8–13–81; 12:56 pm]

BILLING CODE 8010–01–M

17 CFR Part 230

[Release No. 33-6335, 34-18011, IC-11889, File No. S7-897]

Circumstances Affecting the Determination of What Constitutes Reasonable Investigation and Reasonable Grounds for Belief Under Section 11 of the Securities Act

Treatment of Information Incorporated by Reference Into Registration Statements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment a proposed rule identifying certain circumstances bearing upon the reasonableness of the investigation conducted to discharge one's obligation under Section 11(b) of the Securities Act of 1933 and upon what constitutes reasonable grounds for belief under that Section. The Commission also is soliciting further comment on a proposed rule relating to the effective date of information incorporated by reference into a registration statement, as well as a proposed rule regarding the effect of any statement in a registration statement modifying or superseding a statement in a document incorporated by reference.

These three rules are being proposed as part of the Commission's comprehensive program to integrate the disclosure requirements of the Securities Act and the Securities Exchange Act of 1934. The proposals relate to the concerns expressed by some members of the financial community regarding the ability of underwriters and others to undertake a reasonable investigation with respect to the adequacy of the information incorporated by reference from periodic reports filed under the Exchange Act into the short form registration statements utilized in an integrated disclosure system.

DATE: Comments must be received on or before October 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-897. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Gregory H. Mathews, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 at (202) 272-2589.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for comment Rule 176 (17 CFR 230.176) under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.). The proposed rule, which would codify Section 1704(g) of the American Law Institute's proposed Federal Securities Code (the "Code"), is intended to make explicit what circumstances may bear upon the determination of what constitutes a reasonable investigation and reasonable ground for belief as these terms are used in Section 11(b) of the Securities Act.

In addition, the Commission is republishing as part of Regulation C under the Securities Act (17 CFR 230.400 through 230.494) prior proposals [1] regarding the effective date of documents incorporated by reference and the legal effect of modifying or superseding statements in a registration statement. Specifically, proposed Rule 412 (17 CFR 230.412) [Effective Date of Certain Documents Incorporated by Reference] would provide that the effective date of a document incorporated by reference in a registration statement for purposes of Section 11(a) of the Securities Act is the date of the initial filing of such document with the Commission. Proposed Rule 418 (17 CFR 230.418) [Modified or superseded documents] would: (1) deem a statement contained in a document incorporated by reference to be modified or superseded to the extent that it has been modified or replaced by a statement contained in the prospectus or in any other subsequently filed document incorporated by reference; (2) provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws, and (3) provide that any statement so modified or superseded shall not be deemed in its prior form to constitute a part of the registration statement or prospectus for purposes of the Act.

These three rules are being proposed as part of the Commission's comprehensive program to integrate the disclosure requirements of the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq.). The proposals relate to the concerns expressed by some members of the financial community regarding the ability of underwriters and others to undertake a reasonable investigation with respect to the adequacy of the information incorporated by reference from periodic reports filed under the Exchange Act into the short form registration statements utilized in an integrated disclosure system.

The Commission today also has published for comment in separate releases several other rulemaking proposals. These proposals include: (1) a three tier system for the registration of securities, Forms S-1, S-2 and S-3 (originally denominated for comment purposes as Forms A, B and C);[2] (2) expansion of Regulation S-K (17 CFR 229.001 et seq.) to include additional disclosure items and the rescission of the Guides for the Preparation and Filing of Registration Statements and Reports ("Guides"), other than Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides;[3] (3) amendments to simplify and clarify procedural requirements, thereby commencing the Commission's "sunset" review of Regulation C;[4] (4) a new rule governing registration of securities to be sold in a continuous or delayed offering;[5] (5) a statement of the Commission's policy with respect to the disclosure of security ratings;[6] and (6) amendments to other Securities Act registration forms [7] and certain Exchange Act forms and schedules [8] to incorporate the new Regulation S-K provisions and make other changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as the continuation of the Commission's "sunset" review of all existing rules and regulations relating to disclosure.

I. Background

The Securities Act and the Exchange Act, as originally enacted, served different functions. The Securities Act

[1] *See* Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693] and Securities Act Release No. 5998 (November 17, 1978) [43 FR 56053].

[2] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693] (the "ABC Release").

[3] Securities Act Release No. 6332 (August 6, 1981) (the "Regulation S-K Release") as originally proposed in Securities Act Release No. 6276 (December 23, 1980) [46 FR 78] (the "Guides Release").

[4] Securities Act Release No. 6333 (August 6, 1981) (the "Regulation C Release").

[5] Securities Act Release No. 6334 (August 6, 1981). Originally proposed as part of Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].

[6] Securities Act Release No. 6336 (August 6, 1981).

[7] Securities Act Release No. 6337 (August 6, 1981).

[8] Securities Exchange Act Release No. 18014 (August 6, 1981).

was adopted to prevent fraud and to assure "full and fair disclosure of the character of securities" sold to the public.[9] The Exchange Act was devised to regulate the brokers and dealers who sell securities and the markets in which investors continually trade the securities previously issued to the public. The disclosure provisions of the Securities Act were triggered only by a public offering and related to the offering and the condition of the issuer at that time. The disclosure provisions of the Exchange Act required, *inter alia*, that issuers periodically make available up-to-date information about each class of securities listed for trading on a stock exchange, whether or not securities actually were being sold to the public.[10] Subsequent amendments tb the Exchange Act [11] expanded the application of these continuous requirements to all listed and unlisted issuers with over $1 million in assets and a class of securities held of record by at least 500 persons.

Prior to 1964, the transaction-based disclosure system of the Securities Act and the continuous disclosure system of the Exchange Act operated independently of each other. Issuers, underwriters, accountants and others spent much time and effort preparing the lengthy registration statement, including the prospectus, required by the Securities Act. Information had to be set forth in that registration statement even if it had been disclosed previously in a periodic report filed by the issuer pursuant to the Exchange Act. Commentators noted the needless duplication and overlap resulting from this situation,[12] and in 1967 the Commission responded by adopting a new short form of registration, Form S–7 (17 CFR 239.26),[13] which permitted certain seasoned registrants to rely upon information reported under the Exchange Act to satisfy partially the information requirements of the registration statement.[14]

Another major step toward better coordination of the two disclosure systems occurred in 1970 when the Commission, acting upon recommendations of its Wheat Report,[15] adopted Form S–16 (17 CFR 239.27).[16] Issuers qualified to use Form S–7 could utilize Form S–16 to register securities to be sold in certain secondary distributions by the issuer's shareholders. Through the device of incorporating by reference information in Exchange Act reports, Form S–16 minimized the amount of previously disclosed information required to be reiterated in the prospectus delivered to investors. In 1978, Form S–16 was amended to make it available for certain primary offerings that are underwritten on a firm commitment basis.[17] Because Form S–16 relies upon incorporation by reference, it can be prepared by the issuer in far less time than it takes to prepare the previously utilized long form registration statements.

In 1976, then Chairman Roderick M. Hills appointed the Advisory Committee on Corporate Disclosure (the "Advisory Committee") to evaluate the corporate disclosure system that had developed under the federal securities laws as implemented by the Commission. In its final report, published in November 1977, the Advisory Committee recommended, among other things, the complete integration of the Federal Securities Acts, primarily by incorporating by reference Exchange Act reports into Securities Act registration statements.[18] New Form S–15 (17 CFR 239.29) [19] and the revision of the system of registration of securities, which is being published today, are substantially based on this recommendation of the Advisory Committee.

Proposed Form S–3,[20] which would be available for certain primary and secondary offerings by seasoned issuers, requires the incorporation by reference of the issuer's latest Form 10–K (17 CFR 249.310) and all other Exchange Act reports filed by the issuer since the end of the fiscal year covered by the Form 10–K. In addition, Item 11 of proposed Form S–3 requires that this information be updated by describing in the prospectus all material changes in the issuer's affairs which have not been described previously in periodic reports.

Proposed Form S–2 [21] basically would be available to an even larger group of relatively seasoned issuers. This proposed form gives issuers the option of meeting certain of the informational requirements of the form by incorporating the relevant information contained in the issuer's annual report provided security holders pursuant to Rule 14a–3 (17 CFR 240.14a–3) or Rule 14c–3 (17 CFR 240.14c–3). Also, the issuer's latest Form 10–Q can be used to meet such requirements. Unlike Form S–3, however, the incorporated documents would have to be delivered to investors.

Finally, the Commission has proposed Rule 462A (17 CFR 230.462A) [Delayed or Continuous Offering and Sale of Securities], which would permit registration of securities for offering in the future ("shelf registration") in amounts that can reasonably be expected to be offered and sold within two years.[22] A principal condition of the proposal is that the information in the registration statement be kept current during the offering. If a shelf offering is registered on proposed Form S–3, the obligation to keep information current would ordinarily be met by incorporation by reference of Exchange Act reports filed throughout the period of the offering.

If the current proposed changes are adopted, the cumulative effect clearly will be to increase greatly the extent to which previously filed periodic reports are relied upon to satisfy some of the disclosure requirements of the Securities Act. The result will be that every company reporting for at least three years under the Exchange Act, and in a timely manner during the third year, can utilize its Exchange Act reports in connection with a public offering. This reliance should reduce substantially both the printing cost of registration statements and the time and expense necessary to prepare them. As a result the Commission will have eliminated artificial delays to rapid access to today's capital markets.

Although the purpose of integration is to streamline and simplify disclosure for the benefit of issuers and investors, the

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[9] H.R. No. 152, 73d Cong., 1st Sess. 24 (1933).

[10] These provisions sought to overcome the obstacles encountered by the exchanges in "securing proper information for the investor." H.R. No. 1383, 73d Cong., 2d Session 13 (1934).

[11] Primarily the addition of Section 15(d) in 1936 and Section 12(g) in 1964.

[12] *See, e.g.*, Cohen, " 'Truth in Securities' Revisited," 79 Harv. L. Rev. 1340, 1341 (1966).

[13] Securities Act Release No. 4886 (November 26, 1967) [32 FR 17933].

[14] Form S–7 was amended in 1976 to substantially broaden the number of eligible issuers in and the types to transactions for which it could be used. Securities Act Reaease No. 5791 (December 20, 1976) [41 FR 56304]

[15] Securities and Exchange Commission, *Disclosure To Investors: A Reappraisal of Administrative Policies Under the 1933 and 1934 Acts* (1969).

[16] Securities Act Release No. 5117 (December 23, 1970) [36 FR 777].

7 Securities Act Release No. 5923 (April 10, 1078) [43 FR 18672].

[18] *Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission*, 95th Cong., 1st Sess. 451 (Comm. Print 1977). (Hereinafter *Advisory Committee Report*).

[19] Securities Act Release No. 6232 (September 2, 1980) [45 FR 63647].

[20] The Form was initially proposed as Form A in the ABC Release. It has been revised and redesignated as proposed Form S–3. *See* Securities Act Release No. 6331, *supra* note 2.

[21] The form was initially proposed as Form B in the ABC Release. The draft form has been redesignated and reproposed, with certain revisions, for further public comment. *Id.*

[22] Proposed Rule 462A, Securities Act Release No. 6276 (December 23, 1980) [46 FR 78]. The proposal has been revised and is being republished today for further comment, Securities Act Release No. 6334, *supra* note 5.

Commission recognizes that the changes may be perceived as affecting the manner in which persons fulfill their responsibilities under the Securities Act. Accordingly, the Commission believes it is appropriate at this time to address certain issues relating to information in an Exchange Act document which is incorporated by reference in a Securities Act registration statement.

II. Concerns Regarding Responsibilities Under the Integrated Disclosure System

The Securities Act was conceived in order to "bring back public confidence" which had been eviscerated by the widespread securities frauds of the 1920's.[23] According to James Landis, one of the drafters of the Securities Act, the lengthy Senate hearings on corporate financing which preceded adoption of the Act, "indicted a system as a whole that had failed miserably in imposing those essential fiduciary standards that should govern persons whose function it was to handle other people's money."[24] The resulting Securities Act imposed high standards of care on all persons involved in public offerings of securities. The legislative history indicates that the Congressional intent in adopting the Securities Act was to impose standards of "[h]onesty, care and competence" upon those who participate in preparation of the registration statement or the distribution to public investors of the securities registered thereunder.[25]

The statute generally requires that new public issues of securites be registered with the Commission. The signers of the registration statement, the issuer's directors or partners, the underwriters, the accountants and certain other persons are made civilly liable by section 11(a) of the Securities Act for any untrue statement of a materal fact which is contained in an effective registration statement or for any omission to state a material fact required to be stated therein or necessary to avoid making the statements therein misleading.[26] Section 11(b) of the Securities Act provides that each person, other than the issue, will not be held liable, however, if he can sustain the burden of proof that his conduct, under the circumstances, was reasonable.[27] Specifically, sub-section 11(b)(3) permits the defendant to prove that he made a reasonable investigation of and had reasonable grounds to believe in the accuracy of the non-expertised portions of the registration statement or, with respect to any part presented upon the authority of an expert other than the defendant, that he had no reasonable ground to believe and did not believe there was a material omission or misstatement.[28]

Underwriters and others have expressed concern regarding their ability to discharge fully their responsibilities under Section 11 with respect to registration statements incorporating substantial information from periodic reports. Historically, preparation of the traditional Form S-1 (17 CFR 239.11) registration statement began many weeks in advance of the proposed offering due to the time required to assemble and verify the information required to be set forth in the registration statement and prospectus. During this time, underwriters, directors and others conducted the necessary due diligence inquiries which, as a matter of prudence, were substantially completed before the initial filing of the registration statement. In contrast, integrated short form registration statements rely, to the maximum extent possible, on information contained in previously filed Exchange Act reports or in the annual report to security holders. Information actually set forth in the short form registration statement pertains primarily to the proposed transaction, the use of proceeds and the updating of information in incorporated documents. Preparation time is reduced sharply, as is the period of time between the issuer's decision to undertake a securities offering and the filing of the registration statement with the Commission.[29] Some commentators are fearful that this reduction in preparation time, together with competitive pressures, will restrict the ability of responsible underwriters to conduct what would be deemed to be a reasonable investigation, pursuant to Section 11, of the contents of the registration statement. They believe that issuers may be reluctant to wait for responsible underwriters to finish their inquiry, and may be receptive to offers from underwriters willing to do less.

Some underwriters also object to utilizing information in periodic reports for registration purposes, because it has been composed by persons without consultation with the underwriters who may, in turn, be held, in the context of a registration statement, to a higher standard of civil liability than that to which the original preparers may have been subject.[30] Moreover, there is a perception that issures may be reluctant to modify previously filed documents in instances where the underwriters question the quality of the disclosure and that this reluctance, again coupled with competitive pressures, will hinder due diligence activities.

Moreover, because Section 11 imposes liability for omissions or misstatements of material fact in any part of the registration statement when that part became effective, there has been concern that liability could be asserted based on information in a previously filed document which was accurate when filed but which had become outdated and subsequently was incorporated by reference into a registration statement.

Proposed Rule 462A, allowing shelf registration, also has caused apprehension. Commentators on the rule as initially proposed believed that insufficient consideration had been given to the responsibilities of the persons involved in a shelf registration of a primary at the market equity offering under the new proposed Rule.[31] For example, a shelf offering on proposed Form S-3 could involve automatic incorporation by reference into the registration statement of Exchange Act reports for a substantial period of time because the offering may be made on a delayed or continuous basis. In addition, if an underwriter is brought into a shelf offering after the initial effective date of the registration statement, the late-arriving underwriter would be responsible for the accuracy of the contents of the registration statement as of the time of his entry into the transaction.[32] Although incorporation by reference of subsequently filed documents and changes in underwriters can occur in any offering, they may be more likely to

[23] President Franklin D. Roosevelt, quoted in H.R. No. 85, 73d Cong., 1st Sess. 2 (1933).

[24] Landis, "The Legislative History of the Securities Act of 1933," 28 Geo. Wash. L. Rev. 29, 30 (1959).

[25] H.R. No. 85 at 5.

[26] 15 U.S.C. § 77k(a).

[27] The standard of reasonableness is "that required of a prudent man in the management of his own property." 15 U.S.C. § 77k(c).

[28] § 11(b)(3), 15 U.S.C. § 77k(b)(3).

[29] For estimates of the amount by which preparation time may be reduced *see* Hayes, "The Transformation of Investment Banking," 57 *Harv. Bus. Rev.* 153, 168 (January-February 1979) and "The Mixed Blessing of the S-16," *Institutional Investor* 40 (November 1980).

[30] Newly elected directors of an issuer, who were not in office when an Exchange Act report was filed, would be in a similar position.

[31] See Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].

[32] Section 11(d) of the Securities Act provides that:

> If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

occur in shelf offerings, which may continue over a substantial period and contemplate a variety of offering techniques for the registered securities.[33]

III. Proposals to Address Concerns in an Integrated Disclosure System

In the past, several specific suggestions addressing the concerns of members of the financial community have been advanced.

A. Recommendation of the Advisory Committee on Corporate Disclosure

In 1977, the Advisory Committee, in urging the comprehensive integration of disclosure requirements, expressed its belief that "this expanded utilization of incorporation by reference of 1934 Act filings necessitates a corresponding limiting interpretation of the liability provisions . . ." of the Securities Acts.[34] Toward this end, the Advisory Committee recommended that the Commission adopt a rule identifying seven factors a court should take into account when determining what constitutes reasonable investigation or reasonable care and reasonable ground for belief under the Securities Act with respect to information incorporated by reference into a registration statement.[35]

[33] Proposed Rule 462A, as revised, may facilitate the activities of underwriters and others in fulfilling their statutory responsibilities in shelf offerings. Under the new proposal, fundamental changes in the registration statement (if not set forth in incorporated documents) and the most significant changes in underwriters—addition or deletion of a managing underwriter (other than as a co-manager)—must be reflected in a post-effective amendment. The filing of an amendment clearly identifies the information for which an existing or new underwriter or other person is responsible and allows underwriters and others an opportunity to evaluate that information.

[34] *Advisory Committee Report*, at 451.

[35] The Advisory Committee proposed the following rule:

In determining what constitutes reasonable investigation or care and reasonable ground for belief under the Securities Act of 1933, of information incorporated by reference into a registration statement or prospectus, the standard of reasonableness is that required by a prudent man under the circumstances, including but not limited to (1) the type of registrant, (2) the type of particular person, (3) the office held when the person is an officer, (4) the presence or abence of another relationship to the registrant when the person is a director or proposed director, (5) reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the registrant and the filing), (6) the type of underwriting arrangement, the role of the particular person as an underwriter, and the accessibility to information with respect to the registrant when the person is an underwriter, (7) the type of security, and (8) whether or not with respect to information or a document incorporated by reference, the particular person had any responsibility for the information or document at the time of the filing from which it was incorporated.

Advisory Committee Report at 454–55.

B. Securities Industry Association Proposals

In 1978, following the Commission's amendment of Form S–16 to permit use of the Form for certain primary offerings of securities,[36] the Corporate Finance Committee of the Securities Industry Association (SIA) formally petitioned the Commission to (1) adopt a rule concerning underwriters' liability with respect to registration statements on Form S–16 and (2) either to suspend the availability of Form S–16 for primary offerings until the adoption of such a rule or to adopt an emergency temporary rule on this subject.[37]

The emergency temporary rule proposed by the SIA was patterned after Section 1704(g) of the American Law Institute's proposed Federal Securities Code[38] but applicable only when an offering was made on Form S–16. It provided that:

In determining whether an underwriter has made a reasonable investigation, exercised care or had a reasonable ground for belief under the [Securities] Act with respect to a registration statement on Form S–16, relevant circumstances include (1) the type of registrant, (2) the type of security, (3) the type of underwriting arrangement, the role of the underwriter and the accessibility to information with respect to the registrant and (4) with respect to information or a document incorporated by reference, the fact (if such is the case) that the underwriter had no responsibility with respect to the information or document at the time of the filing from which it was incorporated.

Subsequently, the SIA submitted a proposed permanent rule which would have provided underwriters a safe harbor from liability under Section 11 and Section 12(2) of the Securities Act under certain circumstances.[39]

[36] Securities Act Release No. 5923 (April 11, 1978) [43 FR 16672].

[37] Letter of Paul R. Judy, Chairman, Corporate Finance Committee, Securities Industry Association to the Securities and Exchange Commission dated May 1, 1978.

[38] The relevant provisions of the Federal Securities Code are discussed in the text accompanying notes 48–50, *infra*.

[39] The proposed rule provided that:

an underwriter shall be deemed to have conducted a reasonable investigation and to have reasonable ground for belief for purposes of Section 11, and to have exercised reasonable care for purposes of Section 12(2), of the Securities Act of 1933 if the underwriter, (1) has read the registration statement including all exhibits and documents incorporated therein by reference, (2) has discussed the registration statement with responsible representatives of the registrant, and of any persons named therein as an expert, and (3) after such reading and discussion, does not know of any untrue statement of a material fact in such registration statement or any omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

More recently, the Corporate Finance Committee of the SIA, in commenting upon the ABC Release, reaffirmed its support of the approach taken in Section 1704(g) of the Code by proposing that the Commission adopt the following rule:

In determining whether an underwriter has made a reasonable investigation, exercised reasonable care or had a reasonable ground for belief under the [Securities] Act with respect to a registration statement, relevant circumstances include, but are not necessarily limited to, (1) the type of registrant, (2) the type of security, (3) the type of underwriting arrangement (e.g., whether negotiated or competitive), the role of the underwriter and the accessibility of information with respect to the registrant and (4) with respect to information or a document incorporated by reference, the fact (if such is the case) that the underwriter had no responsibility with respect to the information or document at the time of the filing from which it was incorporated.[40]

The Federal Regulation Committee of the SIA, in its comment letter on the ABC Release, also urged adoption of a rule comparable to Section 1704(g) of the draft Federal Securities Code.[41]

C. Prior Commission Actions

While the Commission declined to adopt either of the proposed rules submitted by the SIA in 1978, it did express its belief that,

a court would consider all circumstances surrounding an underwriter's position with respect to information contained in documents incorporated by reference into a Form S-16 registration statement including the presence or absence of responsibility for material contained therein at the time of filing as well as any other circumstances inherent in the type of offering that would legitimately affect an underwriter's ability to discharge its "due diligence" obligation under the Securities Act.[42]

At the same time, the Commission proposed a rule intended to assuage some of the concerns of underwriters about their potential liability for inaccuracies in previously filed documents incorporated by reference in Form S-16 registration statements.[43] As proposed, new paragraph (e) of item 7 of Form S–16 provided that, for purposes of

Letter of Paul R. Judy, Chairman, Corporate Finance Committee, Securities Industry Association to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, dated June 26, 1978.

[40] Letter from R. John Stanton, Chairman, Corporate Finance Committee to George A. Fitzsimmons dated February 25, 1981 (File No. S7–849).

[41] Letter of Joseph McLaughlin, Chairman, Federal Regulation Committee to George A. Fitzsimmons dated February 18, 1981 (File No. S7–849).

[42] Securities Act Release No. 5998 (November 17, 1978) [43 FR 56054, 56056].

[43] *Id.*

Section 11(a) of the Securities Act, the effective date of a document incorporated by reference pursuant to item 7 would be the date of the document's initial filing with the Commission, rather than the effective date of the registration statement into which it was incorporated. A new paragraph (f) of item 7 proposed that a statement in an incorporated document would be deemed not to be part of the registration statement if the statement had been modified or superseded by another statement set forth in the registration statement or incorporated therein by reference. New paragraph (f) also provided that the making of a modifying or superseding statement would not be deemed an admission that the modified or superseded statement constituted a violation of the Federal Securities Acts.[44]

The Commission's proposals were intended to respond to the concern expressed by underwriters regarding their liability for information in incorporated documents which was accurate when filed but may have become outdated and to the possibility that issuers would be hesitant to revise or replace statements in previously filed incorporated documents if such changes could be used against them in a suit alleging violations of the Securities Acts. Only a small number of public comments were submitted to the Commission, and the majority of the commentators stated that the proposals were insufficient.[45] In view of the mixed reaction to the proposals, the Commission took no action on the matter at the conclusion of the public comment period.

In September 1980, the Commission proposed to include similar provisions in Forms A and B [46] in order to address the treatment of statements incorporated by reference. Although a number of the commentators supported the approach proposed by the Commission, others concluded that the proposals were inadequate standing alone. Even if the proposed items led issuers to accept more readily the underwriter's recommendations, it was argued that substantial new liability risks would remain. In particular, it was asserted that the most difficult disclosure issues are detected and resolved in the course of drafting the text of the prospectus to be utilized in the planned securities offering. According to the commentators, the incorporation of information from Exchange Act documents into a short form registration statement would sacrifice this important crucible of the adequacy of disclosure since the underwriter generally would not have participated in preparation of the Exchange Act reports. Nevertheless, the underwriters would be held to the same standard of liability with respect to such information.

Several commentators recommended that the Commission adopt the rule proposed by the Securities Industry Association to provide underwriters who meet certain conditions with a safe harbor from liability for statements made in incorporated Exchange Act reports. Other commentators believed the problem should be dealt with through adoption of a rule similar to Section 1704(g) of the American Law Institute's proposed Federal Securities Code (the "Code").[47]

D. The Federal Securities Code

Section 1704(g) of the Code includes incorporation by reference as a factor to be considered in determining the reasonableness of the underwriter's conduct for purposes of Section 11. Specifically Section 1704(g) of the Code, which would substitute for Section 11(c) of the Securities Act, provides that:

> In determining what constitutes reasonable investigation and reasonable ground for belief under section 1704(f)(3), the standard of reasonableness is that required of a prudent man under the circumstances in the conduct of his own affairs. Relevant circumstances include, with respect to a defendant other than the registrant, (1) the type of registrant, (2) the type of defendant, (3) the office held when the defendant is an officer, (4) the presence or absence of another relationship to the registrant when the defendant is a director or proposed director, (5) reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular defendant with respect to the registrant and the filing), (6) when the defendant is an underwriter, the type of underwriting arrangement, the role of the particular defendant as an underwriter, and the accessibility to information with respect to the registrant, and (7) whether, with respect to a fact or document incorporated by reference, the particular defendant had any responsibility for the fact or document at the time of the filing from which it was incorporated.[48]

This standard would be appliable to evaluating the conduct of each type of defendant presently subject to Section 11 liability.[49]

After extensive analysis and discusssion, the Commission, in September 1980, announced its decision to support enactment of the Federal Securities Code as modified to incorporate changes agreed to by the Commission and Professor Louis Loss, the American Law Institute's reporter, and his advisors.[50] With regard to Section 1704(g), it was agreed that the phrase "and the accessibility to information with respect to the registrant" in clause (6) should be deleted on the ground that the preceding phrase "the role of the particular defendant as an underwriter" in the same clause adequately recognized the more limited role of non-managing underwriters without inviting undue dilution of their responsibilities.

IV. Due Diligence in an Integrated Disclosure System

As discussed earlier, the Securities Act imposes a high standard of conduct on specific persons, including underwriters and directors, associated with a registered public offering of securities. Under Section 11, they must

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[44] *Id.*

[45] *See generally* File No. S7-763.

[46] Item 8 of proposed Form A and item 9 of proposed Form B, provided, in pertinent part, that:

(b) Effective Date of Documents Incorporated by Reference.

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) *Modified or Superseded Documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus the extent that a statement contained in the prospectus or in any other subsequent filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, couse of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

[47] ALI, *Federal Securities Code* (1980).

[48] *Id.* § 1704(g).

[49] Compare Section 11(a) of the Securities Act and Section 1704(f) of the proposed Federal Securities Code.

[50] Securities Act Release No. 6242 (September 18, 1980).

make a reasonable investigation and have reasonable grounds to believe the disclosures in the registration statement are accurate. As the Court stated in *Escott* v. *BarChris Construction Corporation:*

> In order to make the underwriter's participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them. They may not rely solely on the company's officers or on the company's counsel. A prudent man in the management of his own property would not rely on them.[51]

The principal goal of integration is to simplify disclosure and reduce unnecessary repetition and redelivery of information which has already been provided, not to alter the roles of participants in the securities distribution process as originally contemplated by the Securities Act. The integrated disclosure system, past and proposed, is thus not designed to modify the responsiblity of underwriters and others to make a reasonable investigation. Information presented in the registration statement, whether or not incorporated by reference, must be true and complete in all material respects and verified where appropriate. Likewise, nothing in the Commission's integrated disclosure system precludes conducting adequate due diligence. This point can be demonstrated by addressing the two principal concerns which have been raised.

First, as discussed above, commentators have expressed concern about the short time involved in document preparation. There also may be a substantial reduction in the time taken for pre-effective review at the Commission. As to the latter point, however, commentators on the ABC Release themselves noted that due diligence generally is performed prior to filing with the Commission, rendering the time is registration largely irrelevant. As to the former point, there is nothing which compels an underwriter to proceed prematurely with an offering. Although, as discussed below, he may wish to arrange his due diligence procedures over time for the purpose of avoiding last minute delays in an offering environment characterized by rapid market changes, in the final analysis the underwriter is never compelled to proceed with an offering until he has accomplished his due diligence.

The second major concern relates to the fact that documents, prepared by others, often at a much earlier date, are incorporated by reference into the registration statement.[52] Again, it must be emphasized that due diligence requires a reasonable investigation of all the information presented therein and any information incorporated by reference. If such material contains a material misstatement, or omits a material fact, then, in order to avoid liability, a subsequent document must be filed to correct the earlier one, or the information must be restated correctly in the registration statement. Nothing in the integrated disclosure system precludes such action.

The Commission specifically rejects the suggestion that the underwriter needs only to read the incorporated materials and discuss them with representatives of the registrant and named experts. Because the registrant would be the sole source of virtually all information, this approach would not, in and of itself, include the element of verification required by the case law[53] and contemplated by the statute.

Thus, verification in appropriate circumstances[54] is still required, and if a material misstatement or omission has been made, correction by amendment or restatement must be made. For example, a major supply contract on which the registrant is substantially dependent should be reviewed to avoid the possibility of inaccurate references to it in the prospectus. On the other hand, if the alleged misstatement in issue turns on an ambiguity or nuance in the drafted language of an incorporated document making it a close question as to whether a violation even has been committed, then the fact that a particular defendant did not participate in preparing the incorporated document, when combined with judgmental difficulties and practical concerns in making changes in prepared documents, would seem to be an appropriate factor in deciding whether "reasonable belief" in the accuracy of statements existed and thus in deciding whether to attach liability to a particular defendant's conduct.

In sum, the Commission strongly affirms the need for due diligence and its attendant vigilance and verification.[55] The Commission's efforts towards integration of the Securities Act and the Exchange Act relate solely to elimination of unnecessary repetition of disclosure, not to the requirements of due diligence which must accompany any offering. Yet, in view of the fact that court decisions to date have construed due diligence under factual circumstances not involving an integrated system, and in order to encourage a focus on a flexible approach to due diligence rather than a rigid adherence to past practice, the commission believes that it would be helpful to codify its prior statements so that courts and others may fully understand the new system.

V. Techiques of Due Diligence in an Integrated Disclosure System

Although the basic requirements of due diligence do not change in an integrated system, the manner in which due diligence may be accomplished can properly be expected to vary from traditional practice in some cases. To this end, underwriters and others can utilize various techniques. Historical models of due diligence have focused on efforts during the period of activity associated with preparing a registration statement, but the integrated disclosure system requires a broader focus. Issuers, underwriters and their counsel will necessarily be reevaluating all existing practices connected with effectuating the distribution of securities to develop procedures compatible with the integrated approach to registration.

In view of the compressed preparation time and the volatile nature of the capital markets, underwriters may elect to apply somewhat different, but equally thorough, investigatory practices and procedures to integrated registration statements. Unless the underwriter intends to reserve a specified period of time for investigation after the registration statement has been prepared but before filing, it will be necessary to develop in advance a reservoir of knowledge about the companies that may select the underwriter to distribute their securities registered on short form registration statements. To a considerable extent, broker-dealers already take this approach when they provide financial planning and investment advisory services to the investing public, as well as financial advice to companies themselves.

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[51] 283 F. Supp. 643, 647 (S.D.N.Y. 1968).

[52] It should be noted that Item 11 of proposed Form S-2 gives preparers the choice of either incorporating by reference specified information about the registrant from the annual report to security holders and its latest Form 10-Q or of setting forth such information directly in the registration statement.

[53] "If they may escape that responsibility by taking at face value representations made to them by the company's management, then the inclusion of underwriters among those liable under Section 11 affords investors no additional protection." 283 F. Supp. at 697.

[54] "To require an audit would obviously be unreasonable. On the other hand to require a check of matters easily verifiable is not unreasonable." *Id.* at 690.

[55] *See* Section 17(a) of the Securities Act; *Feit* v. *Leasco Data Processing Equipment Corporation*, 332 F. Supp. 544, 584 (E.D.N.Y. 1971).

Extensive data about seasoned companies can be obtained with little effort. The periodic reports filed pursunt to the Exchange Act contain a wealth of information relating to subject issuer's financial performance, competitive position and future prospects. Other material developments are promptly reported on Form 8–K (17 CFR 249.308). Careful review of these filings on an on-going basis not only facilitates a general familiarity with each issuer but should permit the underwriter to identify factors critical to the continiug success of the company. In many cases, the underwriters, also have available analysts' reports to evaluate the issuer and its industry.[56] With greater knowledge, the underwriter will be better prepared to question incomplete explanations, descriptions or reasoning and generally will be more sensitive to detecting and assessing material developments. The process of verification should be expedited as a result.

The issuer's investor relations program provides another opportunity for enhancing the underwriter's familiarity with the company. In particular, analysts and brokers meetings allow underwriters or potential underwriters to question members of management and to evaluate their skills and abilities. Discussion at such sessions can address recent transactions, events and economic results in relation to other companies in the same industry. When combined with the practice of furnishing detailed written analyses of material corporate events, these sessions can duplicate certain steps traditionally undertaken by the underwriter and issuer only during the preparation of the registration statement.

For directors, their continuing involvement in their company's activites must be considered. They receive reports, request information from management, meet periodically, and analyze, plan and participate in the company's business. These activities provide a strong basis for their evaluation of disclosure in a registration statement, and for considering what further due diligence is necessary on their part. In particular, their roles in reviewing the company's Form 10–K annual report and other Exchange Act filings are relevant to their due diligence for a registration statement incorporating those filings.

[56] The Commission has revised the eligibility criteria for use of proposed Form S–3 to insure that only widely followed companies are entitled to use the form for equity offerings.

By developing a detailed familiarity with the company and the periodic reports it files with the Commission, the underwriter and others can minimize the number of additional tasks that must be performed in the context of a subsequent registered offering in order to meet the statutory standard of due diligence. When the short form registration statement is being prepared, the underwriter's investigation then can proceed expeditiously and can be concluded at the earliest appropriate point in time. By way of comparison, a first time offering by a new or relatively unseasoned issuer requires the underwriter and other subject persons to engage in extensive data collection, analysis and independent inquiry during the preparation period for the long form registration statement.[57]

In sum, under the Exchange Act a great deal of information about registered companies is both regularly furnished to the marketplace and also carefully analyzed by investment bankers, directors and others. Although perhaps not traditionally seen in this light, a close following of this information by investment bankers can be an important part of due diligence in the case of an underwritten offering and should expedite the remaining due diligence inquiries and verification.[58]

Issuers eligible for short-form registration also can undertake specific steps designed to minimize the need for elaborate original investigations by underwriters immediately prior to the public distribution of newly registered securities. These actions could include (1) involvement of directors and underwriters in the preparation of the Form 10–K, (2) similar involvement by counsel for the underwriting group, (3) early discussions with underwriters about major new developments and (4) early coordination, well in advance, with respect to offerings contemplated during a given year.

The Commission believes it is crucial that issuers carefully consider what is required for underwriters and others to accomplish their investigation and cooperate with them in their efforts to satisfy their statutory obligations. The financing plans of issuers must take these practical requirements into account.

[57] Incorporation by reference is not applicable to first time registrants. The Commission has discussed at length the obligation of underwriters and others to be particularly thorough in investigating information in such registration statements. *See* Securities Act Release No. 5275 (July 26, 1972) [37 FR 16011].

[58] Some underwriters currently maintain records of the due diligence activities undertaken for each offering in which they are involved. Since due diligence within an integrated disclosure system may take place over an extended period of time, documentation of each step in the investigation for future reference may be especially helpful.

VI. The Proposed Rules

A. Proposal Identifying Circumstances Affecting the Reasonableness of Conduct Under Section 11

The Commission continues to believe that a court would of its own accord take into account every circumstance, including the fact of incorporation by reference, that may legitimately affect the ability of an underwriter or other subject person to conduct a reasonable investigation into the information contained in a registration statement or to develop reasonable grounds for belief. The Commission also believes that only a court can make the determination of whether a defendant's conduct was reasonable under all the circumstances of a particular offering. Nevertheless, many persons believe that it would be helpful for the Commission's position to be reflected in a rule. In light of these views, as well as the further integration of the disclosure requirements of the Securities Acts, the recommendations of the Advisory Committee, and the Commission's endorsement of the proposed Federal Securities Code, the Commission has concluded that it would be appropriate at this time to propose a rule which identifies and interprets certain relevant circumstances which may bear on the determination of whether a defendant has discharged his due diligence obligation under Section 11.

The proposed rule, in effect, would codify Section 1704(g) of the proposed Code, and would be applicable not only to underwriters, but also to all the other types of persons enumerated in Section 11(a) who are liable for misstatements and omissions in effective registration statements. It should be reemphasized, however, that there is variation in the nature of the duty owed to the investing public by the different persons named in Section 11(a). Therefore, not every circumstance set forth in the proposed rule will apply to every defendant to whom it applies.

The explanation of the specific circumstances in the proposed rule is not intended to be exhaustive, but rather to illustrate the manner in which each circumstance can affect the conduct of subject persons.

1. *The type of issuer.* The type of issuer is important because it bears upon the categories of information which should receive special attention and the extent of the investigation generally. Analysis of the type of

business in which the issuer is engaged and the characteristics of the issuer's industry are central to identifying potentially important disclosure issues.[59] A limited partnership raises considerations different from corporations, including the nature of the legal relationship between the general partner, the partnership and the limited partners, the rights and responsibilities of each respective type of partner and the valuation of proposed partnership properties, among other things.

2. *The type of security.* This circumstance is included because of its relevance to evaluation of the financial condition and prospects of the issuer. For example, if the security to be offered is short-term debt, then the adequacy of the issuer's current and short-term economic results will be of paramount importance. On the other hand, in a common equity offering a more broadly based evaluation of the company's long-term as well as short-term prospects would be appropriate.

3. *The type of person.* This circumstance takes account of the fact that Congress intended that there would be variation in the throughness of the investigation performed by the different persons subject to Section 11 liability based on ". . . the importance of their place in the scheme of distribution and with the degree of protection that the public has a right to expect." [60]

4. *The office held when a person is an officer.* The nature of investigation will vary to some extent depending upon the person's position and responsibilities within the organization.

5. *The presence or absence of another relationship to the issuer when the person is a director or proposed director.* This provision would acknowledge that there should be variation in the standard of reasonableness, which is, according to the Conference Report, "[c]ommensurate with the confidence, both as to integrity and competence, that is placed in [the person]." [61] The case law makes clear that a director who has another relationship with the issuer involving expertise, knowledge or responsibility with respect to any matter giving rise to the omission or misstatement will be held to a higher standard of investigation and belief than an outside director with no special knowledge or additional responsibility.[62]

6. *Reasonable reliance on others.* This provision arises from the Congressional intent to permit reliance in the following manner:

> Delegation to others of the performance of acts which it is unreasonable to require that the fiduciary shall personally perform is permissible. Especially is this true where the character of the acts involves professional skill or facilities not possessed by the fiduciary himself. In such cases reliance by the fiduciary, if his reliance is reasonable in the light of all the circumstances, is a full discharge of his responsibilities.[63]

From the legislative history, it appears that this language was included to avoid placing excessive burdens on the issuer's directors.[64]

7. *The type of underwriting arrangement and the role of the particular person as an underwriter.* The reference to the role of the particular person as an underwriter is intended to distinguish between a traditional underwriter and a technical "statutory" underwriter, such as a selling shareholder, who, although meeting the legal definition of underwriter,[65] may not be able to perform the kind of investigation which can reasonably be expected when an investment banking firm acts as an underwriter. Such a person also would play little or no role in the actual distrubution of the securities. The role of a participating underwriter with respect to the distribution is less than that of the managing underwriter, but the Securities Act holds each underwriter to the same standard of liability.[66]

8. *The circumstances of incorporation by reference.* This provision would be relevant where it is alleged that there was an omission or misstatement in the Exchange Act report *ab initio*. Where materially is a close question, where the phrasing, emphasis, balance or completeness of the disclosure is in issue or in other appropriated situations, a court may take into account which persons had responsibility for preparing the previously filed document.[67] Where material information in a previously filed report becomes false and misleading due to a subsequent development, there appears to be no reason for making any distinction among the persons named in Section 11(a).

B. Rules Regarding Effective Date of Documents Incorporated by Reference and the Use of Modified or Superseded Statements

These provisions originally were proposed in Securities Act Release No. 5998 and were reproposed in September 1980 as Item 8 of Form A and Item 9 of Form B. They are being reproposed as new Rules 412 and 418 of Regulation C to indicate that the rules would apply to every registration form which incorporates by reference information in previously filed documents. The intended effect is to convey explicitly the Commission's belief that updated or subsequently improved disclosure promotes the purposes of the Federal securities laws and therefore the fact of change should have no probative value.

The Commission, however, is reconsidering proposed Rule 412 which would provide that the effective date of an incorporated document for purposes of Section 11(a) is the date of its initial filing with the Commission.[68] This rule is clearly appropriate for documents filed and incorporated after the effective date

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[59] The case of *Escott* v. *BarChris, supra* note 51, illustrates this point. Adequate cash flow is a critical concern for most construction companies, and this was certainly true for BarChris. BarChris depended upon its factor to provide the funds it needed on an ongoing basis to construct and equip bowling alleys. The underwriters and others failed to examine agreements between BarChris and its factor which obligated BarChris to repurchase all the notes of defaulting customers in certain circumstances. There was no review of the factor's correspondence with BarChris discussing the problem of customer delinquencies nor was there any meeting with representatives of the factor. Such inquiries would have revealed material omissions or misstatements in BarChris's registration statement. There also was inadequate investigation of other matters including BarChris's status with its construction creditors.

[60] H.R. No. 85 at 9. The Court stated in *Feit* v. *Leasco* that "what constitutes 'reasonable investigation' and a 'reasonable ground to believe' will vary with the degree of involvement of the individual, his expertise and his access to the pertinent information and data." 332 F. Supp. 544, 577. *See also* the statement of James Landis that, "reasonability . . . will differ widely according to the person involved." "Liability Sections of the Securities Act Authoritatively Discussed," 18 *AM. Accountant* 330, 332 (1933).

[61] H.R. No. 152, 73d Cong., 1st Sess. 26 (1933).

[62] *See, e.g., Escott* v. *BarChris*, 283 F. Supp. at 684–690. *See generally*, Folk, "Civil Liability Under the Federal Securities Acts: The *BarChris* Case, Part I," 55 Va. Rev. 1, 21–48 (1969).

[63] H.R. No. 152 at 26.

[64] *See, e.g., Hearings on S. 875 before the Senate Comm. on Banking and Currency*, 73d Cong., 1st Sess. 206–10 (1933); *See also* Landis, "The Legislative History of the Securities Act of 1933," 28 Geo. Wash L. Rev. 29, 48 (1859).

[65] Section 2(11).

[66] Section 11(a). The Commission has stated that each participating underwriter "must satisfy himself that the managing underwriter makes the kind of investigation the participant would have performed if he were the manager." 37 FR at 18014. *See also*, the Court's discussion of this issue *In Re Gap Stores Securities Litigation*, 79 F.R.D. 283, 300-02 (N.D. Cal. 1978).

[67] *See also*, discussion of this issue in Section IV of this release.

[68] The proposed rule specifically indicates that filing of an Exchange Act report does not create an effective date for purposes of commencement of the statute of limitations. It should be noted that Form S-8 and proposed Form S-3 provide that filing of a subsequent annual report under the Exchange Act which is incorporated by reference is treated as a new registration statement for purposes of the statute of limitations.

of the registration statement.[69] Information in such documents cannot be evaluated, for purposes of Section 11(a), as of a time earlier than their initial filing. Yet, this conclusion is so obvious that perhaps it need not be stated by rule. As to incorporated documents filed before the registration statement becomes effective, the application of the rule is less certain. In any event, the persons subject to Section 11(a) must evaluate the entire contents of the registration statement—including any information incorporated by reference—as of the effective date, in order to fulfill their due diligence obligations. The declaration that the effective date of a prior filing is its initial filing date does not mean that it must be evaluated for purposes of Section 11(a) as of that date or that if there is an error in that filing a liability will attach under the Securities Act based solely on the contents of the document at the time of its initial filing. Rather, inaccurate or out-dated information in a prior filing should not be deemed to make the prospectus false or misleading if up-dating or correcting information is included in a later filing or in the registration statement. Yet this latter principle is better expressed in the provisions of proposed Forms S–2 and S–3 regarding information about material unreported developments[70] and in Rule 418 regarding modified and superseded documents. Accordingly, the Commission specifically requests comments on whether some or all of Rule 412 might not be necessary or appropriate to clarify responsibilities for incorporated documents.

VII. Conclusion

Prior to enactment of the Securities Act in 1933, there was little information available about the new issues of securities offered for sale to the public.[71] Today, however, a wealth of accounting and other company-specific information is rapidly disseminated throughout increasingly efficient securities markets. Because the securities markets absorb previously filed information about seasoned issuers, the Commission has determined to permit such issuers to satisfy certain disclosure requirements of the Securities Act by incorporating by reference into the registration statement pertinent information, updated where necessary, from previously filed Exchange Act reports. Although an efficient market conveys information expeditiously, it has no capacity to authenticate information.[72] Therefore, the Commission rejects any notion that investors no longer rely upon the underwriter and others to perform an investigatory function.[73]

Proposed Rule 176 is intended to clarify when there may be legitimate variation in the nature of investigation performed and in the basis for reasonable belief. Proposed Rules 412 and 418 are designed to assist underwriters and others in assuring there is adequate disclosure of all material information in short form registration statements. The Commission believes that these three rules respond to the concerns which have been expressed by underwriters in the past regarding their liability risks with respect to information incorporated by reference into a registration statement.

Finally, as part of its analysis of the operation of the provisions of Regulation C, the Commission is giving consideration to the question of whether Rule 461[74] should be amended to require that the managing underwriter state, in connection with a request for acceleration, whether there has been time to reasonably review and comment upon documents incorporated by reference into the registration statement. Such a proposal would ensure that underwriters can take as much time as necessary to complete the investigation prior to filing the registration statement or the submission of an acceleration request. Accordingly, the Commission invites commentators to address the question of whether there is need for such a rule.

Text of Proposed Amendments

17 CFR Part 230 is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding § 230.176 to read as follows:

§ 230.176 Circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds for belief under section 11 of the Securities Act.

In determining whether or not the conduct of a person constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in section 11(c), relevant circumstances include, with respect to a person other than the issuer,

(a) The type of issuer;

(b) The type of security;

(c) The type of person;

(d) The office held when the person is an officer;

(e) The presence or absence of another relationship to the issuer when the person is a director or proposed director;

(f) Reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing);

(g) When the person is an underwriter, the type of underwriting arrangement and the role of the particular person as an underwriter; and

(h) Whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated.

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[69] Item 12(b) of proposed Form S–3 requires that during the offering all documents subsequently filed by the registrant pursuant to Sections 13, 14 or 15(d) of the Exchange Act shall be deemed incorporated by reference. There is a similar requirement for proposed Form S–2.

[70] Item 11(a) of proposed Forms S–2 and S–3.

[71] On source has observed that:

A typical offering circular for that period contained little or no financial information, very little information as to the use of proceeds, a rather brief description of the securities themselves and few, if any, material facts relating to the business of the issuer. Furthermore, the disclosures required today with respect to such matters as underwriting spreads, compensation of management and the possible interests of insiders in the financing or in recent transactions with the issuer were virtually unknown.

Halleran and Calderwood, "Effect of Federal Regulation on Distribution and Trading in Securities," 28 Geo. Wash. L. Rev. 86, 94 (1959).

[72] As the Advisory Committee reported:

The market price of a security reflects true information and false information with equal efficiency, as long as the quality of the information is not itself a part of the information in the marketplace. Thus, a fraudulent income statement not known to be false will be reflected in the market price of the security to the same extent as a true one.

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[73] The Commission agrees that:

No greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter. He is most heavily relied upon to verify published materials because of his expertise in appraising the securities issue and issuer, and because of his incentive to do so. He is familiar with the process of investigating the business conditions of a company and possesses extensive resources for doing so. Since he often has a financial stake in the issue, he has a special motive thoroughly to investigate the issuer's strengths and weaknesses. Prospective investors look to the underwriter—a fact well known to all concerned and especially to the underwriter—to pass on the soundness of the security and the correctness of the registration statement and prospectus.

Chris-Craft Industries Inc. v. *Piper Aircraft Corp.*, 480 F. 2d 341, 370 (2d Cir. 1973), *cert. denied*, 414 U.S. 910 (1973).

[74] 17 CFR 230.461 (1980).

2. By removing present § 230.412 and adding new § 230.412 to read as follows:

§ 230.412 Effective date of certain documents incorporated by reference.

For purposes of determining pursuant to section 11(a) of the Act only when a document incorporated by reference "became effective," the effective date shall be date of the document's initial filing with Commission. For all other purposes under the Act, including section 13, the effective date shall be the effective date of the registration statement.

3. By adding § 230.418 to read as follows:

§ 230.418 Modified or superseded documents.

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the registration statement or the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Authority

These rules are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Rule 176 and proposed Rules 412 and 418 as set forth in Release No. 33-6335 (August 6, 1981), if promulgated, will not have a significant economic impact on entities subject to the amendments, and therefore will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (1) proposed Rule 176 only provides additional guidance to persons subject to section 11(b) of the Securities Act of 1933 and does not modify the statutory responsibilities imposed upon such persons by that section and (2) proposed Rules 412 and 418 are technical in nature and do not alter the requirement that information set forth in a registration statement be true and complete in all material respects.

Dated: August 6, 1981.

John S. R. Shad,

Chairman.

[FR Doc. 81-23442 Filed 8-13-81: 12:50 pm]

BILLING CODE 8010-01-M

17 CFR Part 230

[Release Nos. 33-6336; 34-18012; IC-11892; File No. S7-898]

Disclosure of Security Ratings in Registration Statements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is issuing a statement of its policy and two proposals to permit the voluntary disclosure of security ratings assigned by nationally recognized statistical rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements filed under the Securities Act of 1933. The first proposed rule would permit the disclosure of security ratings in certain communications not deemed a prospectus under the Securities Act of 1933. The second proposed rule would exclude any nationally recognized statistical rating organization whose security rating is disclosed in a registration statement from civil liability under Section 11 of the Securities Act of 1933.

DATE: Comments must be received on or before October 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-898. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Ann Binno or Beverly K. Rubman, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2604.

SUPPLEMENTARY INFORMATION: The Commission today is publishing its policy to permit the voluntary disclosure of security ratings assigned by nationally recognized statistical rating organizations ("rating organizations") to classes of debt securities, convertible debt securities and preferred stock in registration statements under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and is publishing for public comment two proposals to facilitate such disclosure. The Commission is announcing that, contrary to prior general staff positions on this matter, it now will permit the disclosure of security ratings assigned by rating organizations in registration statements. In order to give guidance to registrants, the Commission also is setting forth its views concerning the appropriate disclosure in addition to the actual security rating or ratings assigned to the particular class of securities that registrants should include in the registration statement to provide meaningful information to investors.

To facilitate this change of policy, the Commission is publishing two proposals. The first would amend Rule 134 under the Securities Act (17 CFR 230.134) to permit the disclosure of security ratings of debt securities, convertible debt securities or preferred stock assigned by a rating organization in certain communications deemed not to be a prospectus ("tombstone advertisements"). The second proposal would add a new subparagraph (g) to Rule 436 under the Securities Act (17 CFR 230.436(g)) to provide that a security rating is not a part of a registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act (15 U.S.C. 77 (g) and (k)). If adopted, this proposal would eliminate the required filing by the registrant of the rating organization's consent under Section 7 of the Securities Act if the rating is included in the registration statement and would

exempt the rating organization from liability as an expert under Section 11 of the Securities Act for security ratings included in registration statements. Nonetheless, the rating organization would continue to be subject to liability under the antifraud provisions of the Federal securities laws.[1]

These proposals should be considered in connection with the Commission's rulemaking program to establish an integrated disclosure system under the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq.). Certain of these actions are being proposed or reproposed in revised form with this release. They include: (1) a three tier system for the registration of securities, Forms S–1, S–2 and S–3 (originally denominated for comment purposes as Forms A, B and C);[2] (2) expansion of Regulation S–K (17 CFR 229–001 et seq.) to include additional disclosure items and the rescission of the Guides for the Preparation and Filing of Registration Statements and Reports ("the Guides"), other than Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides;[3] (3) amendments to Regulation C under the Securities Act (17 CFR 230.400 through 230.494) and Regulation 12B (17 CFR 240.12b–1 through 12b–36) under the Exchange Act to simplify and clarify procedural requirements, thereby commencing the Commission's "sunset" review of those regulations;[4] (4) a new rule governing registration of securities to be sold in a delayed or continuous offering;[5] (5) a rule relating to the responsibility of persons subject to Section 11 of the Securities Act in an integrated disclosure system;[6] and (6) amendments to other Securities Act registration forms[7] and certain Exchange Act forms and schedules[8] to incorporate the new Regulation S–K provisions and make other changes. In addition to creating a simplified and integrated disclosure system under the Securities Act and the Exchange Act, these proposals represent a continuation of the Commission's "sunset" review of existing rules and regulations.

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 amendments proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

I. Background

A. Description of Security Ratings

A security rating is typically an alphabetical designation which attempts to quantify the likelihood that an issuer will be able to comply with the terms of a particular obligation. One rating organization describes it as a "current assessment of the credit-worthiness of an obligor with respect to a specific debt obligation."[9] The rating is assigned to a particular class of securities, not to an issuer.[10] In the case of debt securities, including convertible debt securities, a rating is an evaluation of the likelihood that an issuer will be able to make time interest payments and will be able to repay principal. Similarly, preferred stock rating assesses the relative security of dividend payments. A security rating is not a specific market recommendation; it does not take into account market price or individual investor suitability.[11]

B. Administrative History

The traditional policy of the Commission staff has been to discourage the disclosure of security ratings in Commission filings.[12] However, in 1977, the Commission issued a concept release[13] ("1977 Release") which announced that it was considering whether it should encourage or require the disclosure of security ratings in Commission filings. More specifically the 1977 Release invited comment on fourteen areas of inquiry, including: whether disclosure should be made of the ratings of debt securities, equity securities, and commerical paper; whether such disclosure should be voluntary or mandatory; in which documents, if any, should such disclosure appear; would an entity issuing a security rating be the type of person whose consent is required to be filed under Section 7 of the Securities Act, and, if so, should the Commission waive such consent; and what would be the impact of a rating organization being subject to liability under Section 11 of the Securities Act.

Fifty-five letters were received in response to the 1977 Release.[14] The majority of commentators did not favor any rulemaking in this area, citing the current availability of information about security ratings, the fact that a rating represents the subjective opinion of the rating organization that cannot be verified or even explained by the issuer of the securities in question, and concerns about increasing government involvement in the rating process itself. Commentators also raised many

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[1] *See, e.g.*, Section 17(a) of the Securities Act (15 U.S.C. 77q(a)); Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule 10b–5 thereunder (17 CFR 240.10b–5); and Section 206 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6).

[2] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in Securities Act Release No. 6235 (September 2, 1980) (45 FR 63693).

[3] Securities Act Release No. 6332 (August 6, 1981), as originally proposed in Securities Act Release No. 6276 (December 23, 1980) (45 FR 78).

[4] Securities Act Release No. 6333 (August 6, 1981).

[5] Securities Act Release No. 6334 (August 6, 1981). Originally proposed as part of Securities Act Release No. 6276 (December 23, 1980) (45 FR 78).

[6] Securities Act Release No. 6335 (August 6, 1981).

[7] Securities Act Release No. 6337 (August 6, 1981).

[8] Securities Act Release No. 6338 (August 6, 1981).

[9] Standard and Poor's Bond Guide (July 1980) at 6. *See also* Dykstra, *Disclosure of Security Ratings in SEC Filings*, IV Det. Coll. L. Rev. 545, 547–49 (1978) ("ratings are only current projections as to future risk").

[10] To assist the investor in interpreting the alphabetical letter symbols, each of the rating organizations furnishes its own definitions for its respective rating categories. These definitions appear in the publications of the various ratings services and provide the investor with an explanatory scale on which to compare the relative standing of a security.

For example, Standard & Poor's Corporation ("Standard & Poor's") and Fitch Investors Service ("Fitch") utilize a system of grading bonds ranging from AAA (highest investment quality) to D (in default) Moody's Investor Service ("Moody's"), on the other hand, rates bonds from Aaa to C. The letter ratings accorded preferred stock vary somewhat, but generally follow the declining order as described for debt securities. Fitch rates preferred stock with the same designation it employs for debt securities, that is, from AAA to D. Standards & Poor's assigns ratings to preferred stock from AAA to C; and Moody's issues preferred stock ratings from aaa to caa.

[11] As one commentator noted, an AAA-rated bond might be an unwise investment if it were selling at 100% of par while a BBB-rated bond might be an excellent investment at 50% of its par. *See also* Dykstra, *supra*, at 548–49.

[12] Nonetheless, such disclosure has occurred when the issuer considered the downgradig of a security rating to be material under Rule 408 under the Securities Act [17 CFR 230.408] or Rule 12b–20 [17 CFR 240.12b–20], Rule 14a–9 [17 CFR 240.14a–9] or Schedule 14A [17 CFR 240.14a–101] under the Exchange Act or Item 5 of Form 8–K [17 CFR 249.308]. In addition, the staff of the Division of Investment Management generally has taken the position that security rating disclosure in registration statements filed by investment companies is permitted provided that either a consent or a waiver of consent is obtained. The policy discussed herein and the proposed rules also would apply to investment company registration statements, thereby providing a consistent policy for all registrants under the Securities Act.

[13] Securities Act Release No. 5882 (November 3, 1977) [45 FR 58414] (hereinafter "the 1977 Release").

[14] Letters were received from the following categories of commentators: corporations (34); the securities industry (6); law firms an associations (5); other associations (4); rating organizations (4); banks (1) and academicians (1). Copies of these letters are available for public inspection and copying in the Commission's Public Reference Room (File No. S7–727). For the convenience of the public, a copy of the summary of comments prepared by the staff of the Commission has been placed in File No. S7–727 and also is available for public inspection and copying.

practical problems concerning the timing and content of such disclosure particularly in registration statements under the Securities Act.

At the same time, many of the commentators acknowledged the significance and usefulness of security ratings. This significance is reflected in the use of such ratings by investors, by market professionals in establishing the appropriate price and yield for a particular security[15] and by regulatory bodies, including the Commission.[16]

Finally, in its revised proposal to establish a basic framework for Securities Act registration, the Commission is proposing that a registrant not otherwise eligible to register its securities upon proposed Form S–3 may, nonetheless, utilize that abbreviated registration statement for its non-convertible debt securities if such debt is an "investment grade debt security"—that is, if it is rated in one of the four highest corporate bond rating categories by at least one nationally rated statistical rating organization.[17]

II. Change in Commission Position

In light of the general usefulness of security ratings to investors and the market place, and the imporatnce that the Commission and other regulatory entities have attached to the issuance of a security rating in certain instances, the Commission believes that the general staff position toward the disclosure of security ratings is no longer necessary or appropriate, and that investors can benefit from disclosure of security ratings in registration statements under the Securities Act.

Accordingly, the Commission is announcing its position that a registrant may include a security rating or ratings assigned to a class of debt securities or preferred stock in its registration statement.[18] The Commission wishes to make clear that it is not proposing a mandatory rule in this area [19] nor is it indicating that issuers should disclose security ratings. Instead, this release primarily is intended to make clear to the general public that the position in this area has changed. Also, because commentators on the 1977 Release raised many practical problems and issues concerning the timing and content of security rating disclosure, the Commission believes that a statement of its views on these issues may provide guidance to registrants who may desire to disclose a security rating or ratings in a registration statement.[20]

Many commentators on the 1977 Release were concerned that a security rating presented without any further explanation could mislead or confuse investors. The Commission shares this concern but also does not believe that lengthy and detailed explanations are necessary. Nonetheless, the Commission believes that it would be misleading to disclose a security rating in a Commission filing [21] without including certain additional information to provide the reader with a concise explanation of the fundamental characteristics of security ratings while making clear the source of the rating to which the interested investor can turn for further details. Such additional information would include: the name of each rating organization; the rating organization's own description or definition of the characteristics of the category in which the security has been rated; [22] the relative rank of the rating received within the overall classification system used by the rating organization,[23] and an explanation to the effect that a security is not a recommendation to buy, sell or hold these securities, that it is subject to revision or withdrawal at any time by the rating organizations and that, when a security has received more than one security rating, each such rating should be evaluated independently.

The Commission also believes that, if a registrant chooses to disclose a rating in a registration statement, it should include all ratings assigned to the class of securities being registered that are available on the initial date of filing that registration statement. In referring to ratings that are "assigned to" a particular class of securities, the Commission is aware that rating organizations may provide issuers with non-public preliminary indications of the rating that they expect to assign, these preliminary indications may even be subject to an appeal process within the rating organization by the issuer. The Commission does not consider such preliminary indications to be actual assignments of a security rating and would not expect registrants to disclose such ratings.

If one security rating is disclosed in the initial registration statement and an additional rating is assigned subsequent to the filing date but prior to the effective date of the registration statement, that additional rating ordinarily should be set forth in the final prospectus used as part of the registration statement. The Commission does not believe that, ordinarily, the assignment of a second or third security rating by another rating organization or

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[15] *See* Dykstra, *supra*, at 550–52; H. C. Sherwood, *How Corporate and Municipal Debt is Rated*, at 9–10; Ross, "Higher Stakes in the Bond Rating Game," Fortune 132 (April 1976).

[16] For example, under many state laws, legal investments by entities such as savings banks and insurance companies are defined in terms of security ratings. *See, e.g.*, Me. Rev. Stat. tit. 9b., § 553 (1980); Or. Rev. Stat. §§ 708.388, 716.530, 716.545 (1977); S.D. Codified Laws Ann. § 58–27–42 (1978); Tenn. Code Ann. § 56–3–303 (1980); Vt. Stat. Ann. tit. 8, §§ 1154, 1155, and 3463 (1970).

In addition, the Commission relies upon security ratings in its uniform net capital rule so that broker-dealers receive certain reduced deductions from net capital if the short term commercial paper they hold is assigned one of the three highest ratings by at lest two nationally recognized statistical rating organizations. 17 CFR 240.15c3–1(c)(2)(vi)(E).

See also Rule 10f–3 (17 CFR 270.10f–3) under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] which, in part, conditions an exemption from a ban on a registered investment company ("fund") buying municipal securities from an underwriting syndicate in which an interested person of the fund is a member upon the issue receiving an investment grade rating from at least one of the nationally recognized statistical rating organizations.

[17] *See* Securities Act Release No. 6331, *supra*.

[18] Although the reassessment of the Commission position regarding security rating disclosure was prompted, in part, by the proposals in Form S–3, the policy set forth in the release will remain in effect even if the security rating criterion for debt is eliminated from the Form upon adoption. The Commission notes that although registrants henceforth may include security rating disclosure in their registration statements in accordance with the policy set forth in this release, they are not likely to do so until final action is taken concerning rating organization consents pursuant to proposed Rule 436(g). *See* discussion of rating organization consent, *infra*. Until such time as the proposed rule is adopted, the disclosure of a security rating in a registration statement will necessitate the filing of a consent.

[19] In the Commission's view, the current availability of security ratings in the marketplace, the practical problems of disclosure that are discussed herein and that would be exacerbated by any mandatory disclosure requirement, as well as its recognition that no pressing need for such additional requirements has been demonstrated, argue persuasively against such a rule at this time.

[20] Because the Commission is not specifically encouraging disclosure of securities ratings in Commission filings as it has encouraged disclosure of projections, the Commission's views concerning the voluntary disclosure of security ratings are being set forth in a policy release rather than in the context of Regulation S–K, the repository for standard disclosure items for forms filed under the Securities Act and the Exchange Act. The Commission believes that the issuance of policy and interpretive releases relating to disclosure is a useful mechanism for communicating its views to the public in areas where rules are not appropriate. After completion of a sunset review of releases issued in the past and listed in Part 231 of Title 17 of The Code of Federal Regulations, the Commission intends to provide a list of applicable releases on disclosure policy in Regulation S–K.

[21] As discussed *infra*, the Commission is proposing to amend Rule 134 so that the registrant could include only the security rating and the name of the rating organization that assigned such rating in a tombstone advertisement. The additional disclosure discussed herein would not appear in a tombstone advertisement.

[22] The rating organizations generally print these definitions at the beginning of their publications so that they would be readily available to the registrant.

[23] For example, a rating of "A" might be the third highest of six categories for nonconvertible debt securities.

organizations would necessitate an amendment to and recirculation of the preliminary prospectus that contained the first security rating. Nonetheless, if, subsequent to the initial filing of the registration statement but prior to its effectiveness, another rating organization assigns a security rating that is substantially different from the first rating disclosed, the Commission believes the registrant should give serious consideration to amending the registration statement to include the additional rating and to recirculating the preliminary prospectus.[24] Similarly, if an additional rating is assigned in the post-effective period while the distribution is still in progress, the registrant should consider making disclosure of the additional rating by means of a post-effective amendment or sticker to the prospectus pursuant to Rule 424(c) under the Securities Act [17 CFR 230.424(c)]. Again, the Commission would expect such disclosure to be made when the additional rating is substantially different from those previously assigned.

An issue similar to the disclosure of additional ratings could arise in the unusual event that a security rating disclosed in the initial filing was changed during the course of the distribution by the rating organization that assigned it. Such a change would compel the registrant to analyze the nature of the change in order to determine whether, during the pre-effective period, it should amend the previously filed registration statement and should recirculate the preliminary prospectus and, during the post-effective period, whether it should disclose the change by means of a post-effective amendment or sticker to the prospectus pursuant to Rule 424(c).

The Commission also recognizes that, under certain circumstances, registrants might wish to include security ratings in periodic reports filed under the Exchange Act. The Commission has no objection to such a practice.

III. Rating Organization Consent

The Commission is aware that a major barrier to the disclosure of security ratings in Securities Act registration statements has been the issue of whether a rating organization which assigns such rating is an "expert" whose consent must be filed under Section 7 of the Securities Act,[25] and who may be subject to civil liability under Section 11 of the Securities Act.[26] For the reasons discussed below, the Commission does not believe that it is necessary or appropriate to subject the rating organizations to those provisions of Sections 7 and 11. The Commission, therefore, is proposing Rule 436(g) which, if adopted, would not require a rating organization to consent under Section 7 and would exempt it from liability as an expert under Section 11 of the Act.

1. *Comments Received on the 1977 Release.* In response to the request for comments contained in the 1977 Release, commentators identified several areas of concern with respect to the applicability of Sections 7 and 11 of the Securities Act to disclosure of a security rating. Those concerns included possible interference with the registration process, changes in the way security ratings are issued, and increased costs and uncertainty over the scope of liability that might be imposed upon the rating organizations.

In connection with the requirement under Section 7 that the issuer file the consent of any expert together with the registration statement, commentators stated that procuring such consent would disrupt the issuer's registration timetable. They anticipated that the rating organization, if it would consent at all, might not be willing to furnish a consent until it had reviewed all information in the registration statement, in order to ensure that its rating was based on the same data. Others noted that this involvement with both the content of the registration statement and the timing of the public offering would inject the rating organization into the registration process as a participant, not as an objective evaluator, thus lessening its independence from the issuer.

While some commentators believed that the prospect of being held liable under Section 11 would assure that rating organizations gave due attention to their rating activities, others cited possible adverse changes to the rating process that might result. In particular, these commentators believed that the prospect of additional liability would reduce the reliance of the rating organizations on informal subjective factors, resulting in an evaluation based solely on quantifiable data. In the view of the commentators who raised the issue, this change would be detrimental to the rating process. In addition, commentators asserted that the possibility of liability and the uncertainty of the scope of such liability would necessarily result in increased fees charged by rating organizations, as well as possible issuer indemnification to offset any liability incurred under Section 11. They pointed out that these additional costs would be particularly detrimental to new or smaller issuers. Also, commentators claimed that the possibility of additional liability might result in rating agencies refusing to issue ratings for lower quality securities.

2. *Proposed Rule 436(g).* The Commission recognizes that the disclosure of security ratings in Securities Act registration statements raises practical and legal issues under Sections 7 and 11 of the Securities Act. The Commission also is aware that, if a rating organization refuses to consent,[27] disclosure of security ratings may not be permitted in a registration statement. In revising its position to allow the disclosure of security ratings, the Commission is not mandating the creation of a new piece of information. Instead, it is seeking to ensure that information that currently is relied on extensively by many members of the investing public and by securities professionals be permitted, if the issuer so chooses, to reach investors directly in the prospectus, not indirectly through

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[24] In many instances, a change in a rating or an additional, different rating might be attributable to intervening events affecting the issuer which would require amended disclosure, even in the absence of the inclusion of the security rating itself in the filing.

[25] Section 7 states in pertinent part:

If . . . any person whose profession gives authority to a statement made by him, is named as having prepared . . . a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared . . . a report or valuation . . . which is used in connection with the registration statement but is not named as having prepared . . . such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement.

[26] Section 11(a) provides that any person acquiring a security registered with the Commission by means of a registration statement which contains an untrue statement of a material fact, or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, may sue "any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared . . . any report or valuation which is used in connection with the registration statement, with respect to the statement in such . . . report, or valuation, which purports to have been prepared or certified by him."

Under Section 11(a) a plaintiff need not establish privity to the defendant and need only make a *prima facie* showing of the material misstatement or omission to meet his burden of proof. The burden then shifts to the defendant/expert under Section 11(b)(3)(i) to prove that "he had, after reasonable investigation, reasonable ground to believe and did believe . . . that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading."

[27] In fact, all three existing rating organizations that meet the proposed definition in Rule 436(g) indicated in their comments on the 1977 Release that they would not provide the requisite consents.

newspapers or by word of mouth. The Commission does not seek to alter, in an indirect fashion, the way those security ratings are prepared nor does it intend to interfere with the issuer's timetable for the registration process. The Commission also is aware that, unlike the case of other experts such as attorneys or accountants, there are few national rating organizations, that they prepare ratings for inclusion in their publications and not for the exclusive proprietary use of the issuer (although issuers generally pay a fee for the rating services), and that issuers do not necessarily have the ability to ensure that the requisite consent is given.

Therefore, the Commission believes it is appropriate to resolve these issues in order to make its revised position concerning security rating disclosure meaningful and is now proposing Rule 436(g) which provides that a security rating assigned to any class of debt security, convertible debt security or preferred stock by a "nationally recognized statistical rating organization" shall not be considered a part of a registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act. Accordingly, the issuer would not be required to file the consent of the rating organization pursuant to Section 7 and the rating organization would not be subject to civil liability as an expert pursuant to Section 11 of the Securities Act.

The proposed rule exempts only ratings assigned by a "nationally recognized statistical rating organization" and provides that this term shall have the same meaning as in the Commission's uniform net capital rule.[28] The Commission recognizes that the purposes behind the net capital rule [29] differ from those underlying the proposals made herein and that there may be entities rating corporate debt securities but not commercial paper that ought to be accorded the status of a "nationally recognized statistical rating organization" with regard to those ratings. Despite these differences, the Commission believes that the investigation and analysis performed by the Commission staff in determining what organizations should be deemed "nationally recognized statistical rating organizations" for purposes of the net capital rule probably also are sufficient for security rating disclosure so that two different definitions of the same term are not necessary. However, the Commission specifically invites comment on this issue and on other possible definitions or clarifications of the term.

Proposed Rule 436(g) follows the approach taken by the Commission in exempting reports issued by accountants following a review of unaudited interim financial information pursuant to Statement on Auditing Standards No. 24 [30] that are included in Securities Act filings from potential liability under Section 11 of the Act.[31] In that instance, the Commission deemed such action appropriate in order to further its goals of encouraging increased auditor involvement with interim financial information and greater usage of reports containing a limited statement of assurance by accountants concerning unaudited financial information.

As previously discussed, the Commission is taking this action, in part, because it is concerned about the practical problems that were raised by the commentators, particularly the possible interference with the rating process and the possible difficulty in obtaining rating organization consents. However, equally significant to the Commission's decision is the fact that rating organizations are already subject to substantial liability under the anti-fraud provisions of the federal securities laws [32] so that they now must adhere to the highest professional standards in determining a security rating.[33] This obligation will in no way be diminished by the adoption of proposed Rule 436(e).

The Commission wishes to emphasize that, in addition to the general anti-fraud provisions, it has jurisdiction over the activities of rating organizations under the Investment Advisers Act of 1940 ("Advisers Act").[34] As fiduciaries, investment advisers have a special duty to base their opinions and recommendations upon current and adequate information.[35] Not only does Section 206 of the Advisers Act prohibit fraudulent practices and activities which operate as a fraud, but it also contains authority for the Commission to adopt appropriate rules to "define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative." [36] The Commission believes that this provision gives it ample authority to regulate the improper issuance of security ratings should abuses develop which necessitate such action.

IV. Tombstone Advertisements

In accordance with the views expressed herein concerning voluntary disclosure of security ratings in registration statements, the Commission believes it is appropriate that issuers also be permitted to disclose such ratings in tombstone advertisements. The Commission notes that such disclosure currently appears in advertisements for securities that are exempt from registration under the Securities Act, notably municipal securities. Accordingly, the Commission is proposing to amend Rule 134(a) under

[28] 17 CFR 240.15c3-1(c)(2)(vi)(E). Although the net capital rule contains no specific definition, staff interpretations thereunder suggest the entities which are accepted as nationally recognized statistical rating organizations. In a "no-action" letter to Lehman Commercial Paper Incorporated, [1975–1976 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶80,513 (March 18, 1976), the Commission staff stated that:

With respect to "nationally recognized statistical rating organizations", no question will be raised by the Division [of Market Regulation] when the following organizations are utilized for the purposes of applying subdivision (c)(2)(vi)(E) of Rule 15c3-1: Standard & Poor's Corporation . . ., Moody's Investors Services, Inc. . . . and Fitch Investors Services, Inc. . . .

[29] Commercial paper ratings under the net capital rule are sought to assure the liquidity of a broker-dealer's investments.

[30] SAS No. 24, "Review of Interim Financial Information" AICPA, March 1979. SAS No. 24 delineates the procedures to be followed by accountants in conducting reviews of unaudited interim financial information and the standards to be used in issuing reports based on these reviews.

[31] *See* Securities Act Release No. 6173 [December 28, 1979] [45 FR 1601].

[32] Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 206 of the Investment Advisers Act.

[33] *See, e.g., Mallinckrodt Chemical Works* v. *Goldman, Sachs & Co.*, 420 F. Supp. 231 (S.D.N.Y. 1976); *University Hill Foundation* v. *Goldman, Sachs & Co.*, 422 F. Supp. 879 (S.D.N.Y. 1976).

[34] 15 U.S.C. 80b-1 et seq. The three major rating organizations, Standard & Poor's, Moody's and Fitch, are all registered with the Commission as investment advisers.

[35] *See* Statement of Philip A. Loomis, Jr., Commissioner, Securities and Exchange Commission, at hearings on Municipal Bonds Rating Regulation before the House Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, 94th Cong., 2d Sess. 17 (1976); *In re John R. Brick*, Securities Exchange Act Release No. 11763 (Oct. 24, 1975), 8 SEC Docket 240; *Paul K. Peers, Inc.*, 42 S.E.C. 539 (1965); *Anne Coseley Robin*, 41 S.E.C. 634 (1963).

[36] Section 206 provides in relevant part that:

It shall be unlawful for any investment adviser, by use of the mails or any means or instumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; . . .

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

the Securities Act to add a new subparagraph (14) which would provide that any security rating or ratings of a class of debt securities, convertible debt securities and preferred stock and the name or names of the rating organization which assigned the rating would not be deemed a prospectus as defined in Section 2(10) of the Securities Act [15 U.S.C. 77b(10)]. As in the case of proposed Rule 436(g), this proposal would define the term "nationally recognized statistical rating organization" by reference to the Commission's uniform net capital rule.

V. Request for Comments

Any interested persons wishing to submit written comments on proposed Rule 134(a)(14) or proposed Rule 436(g) are requested to do so. The Commission also requests comment concerning possible revisions or amendments to any other rules or forms under the Securities Act or the Exchange Act that may be necessary or appropriate to further the purposes discussed herein. The Commission further solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Act or the Exchange Act.

VI. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding paragraph (a)(14) to § 230.134 to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) * * *

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s).

(ii) For the purpose of paragraph 14(a)(i) of this section, the term "nationally recognized statistical rating organization" shall have the same meaning as used in Rule 15c3–1(c)(2)(vi)(E) under Securities Exchange Act of 1934 (17 CFR 240.15c3–1(c)(2)(vi)(E)).

* * * * *

2. By adding paragraph (g) to § 230.436 to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a security rating or ratings assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a nationally recognized statistical rating organization shall not be considered a part of a registration statement prepared or certified by a person or a report or valuation prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

(2) For the purpose of paragraph (g)(1) of this section, the term "nationally recognized statistical rating organization" shall have the same meaning as used in Rule 15c3–1(c)(2)(vi)(E) under the Securities Exchange Act of 1934 (17 CFR 240.15c3–1(c)(2)(vi)(E)).

VII. Statutory Authority

This rulemaking is being promulgated pursuant to Sections 7, 10 and 19(a) of the Securities Act (15 U.S.C. 77g, 77i and 77s(a)).

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rulemaking published in Securities Act Release No. 6336 (August 6, 1981), "Disclosure of Security Ratings in Registration Statements," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reason for such certification is that the proposed rules will impose no mandatory requirements upon issuers but, instead, will remove certain regulatory impediments to the voluntary disclosure of security ratings. It is anticipated that the effects of the proposed rules will not be significant for any class of registrants. Thus, the proposed rules will not have a significant economic impact on any small entities.

Dated: August 6, 1981.

John S. R. Shad,

Chairman.

[FR Doc. 81-23443 Filed 8-13-81; 12:56 pm]

BILLING CODE 8010-01-M

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17 CFR Parts 230 and 239

[Release Nos. 33-6337; 34-18013; File No. S7-899]

Integrated Disclosure: Proposed Implementing Amendments to Rules and Forms Under the Securities Act of 1933 and Rescission of Obsolete Forms.

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Commission is publishing for comment proposed amendments to certain rules and forms under the Securities Act of 1933 and the proposed rescission of rarely used forms under that Act. The proposed amendments are intended: to reflect the proposed revision of Regulation S–K, the repository for content requirements for documents filed with the Commission under the Federal securities laws; to be consistent with the proposed adoption of Forms S–1, S–2 and S–3 which will provide the framework for registration of securities under the Securities Act; to improve and clarify disclosure requirements; to reduce burdens on registrants while ensuring adequate disclosure to investors; and to facilitate the integration of disclosure systems under those Acts.

DATE: Comments must be received on or before October 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C 20549. All comment letters should refer to File No. S7–899. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L St., N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William L. Larsen, (202) 272–2604, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment amendments generally of a technical nature to Rule 138 (17 CFR 230.138) under the Securities Act of 1933 (the "Securities Act") and the following forms for Securities Act registration: S–8 (17 CFR 239.16b); S–11 (17 CFR 239.18); S–14 (17 CFR 239.23); and S–15 (17 CFR 239.29). The proposed technical amendments revise cross-references to Regulation S–K (17 CFR 229.001 *et seq.*) and current forms S–7 (17 CFR 239.26)

and S-16 (17 CFR 239.27) to conform with the proposed revision of Regulation S-K [1] and the proposed adoption of new Forms S-2 and S-3, which would replace Forms S-7 and S-16.[2]

As part of its ongoing program of clarification and streamlining of registration forms, the Commission also is proposing other amendments to Forms S-8, S-11, S-14 and S-15. Among other things, these proposed changes will streamline the forms by substituting references to information required by disclosure items of Regulation S-K where applicable and by deleting instructions made superfluous by the proposed revision of Regulation C under the Securities Act (17 CFR 230.400 to 230.494).[3] Form S-8 would be amended to reflect the fact that in most cases registrants can update form S-8 prospectuses through incorporation by reference of their periodic reports filed under the Securities Exchange Act of 1934 (the "Exchange Act").

In connection with the proposal of new Forms S-1, S-2 and S-3, the Commission proposes to rescind forms S-7 and S-16 and substantially alter the usage and content of existing Form S-2.[4] Proposed Forms S-1 and S-2 will replace current forms S-1 and S-2 in Part 239 of Title 17 of the Code of Federal Regulations. Proposed Form S-3 will be added to Part 239.

The Commission also proposes to rescind a number of rarely-used forms. Such rescissions would include Forms: C-2 (17 CFR 239.4); D-1 (17 CFR 239.6); D-1A (17 CFR 239.7); S-10 (17 CFR 239.17); and S-13 (17 CFR 239.25).

Finally, the Commission is reproposing for comment an amendment to Rule 135 (17 CFR 230.135), which would include in the Rule as a new paragraph the substance of guide 51 (Release of Price Data on subscription Offerings by Listed Companies) of the guides for the Preparation and Filing of Registration Statements and Reports under the Securities Act and the Exchange Act ("Guides").[5]

The Commission today has proposed or reproposed for comment in separate releases several other rulemaking proposals. These proposals include: (1) a three tier system for the registration of securities, Forms S-1, S-2 and S-3 (originally denominated for comment purposes as Forms A, B and C);[6] (2) additional disclosure items and the rescission of the guides, other than Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides;[7] (3) amendments to Regulation C and Regulation 12B under the Exchange Act [17 CFR 240.12b-1 thru 12b-36] to simplify and clarify procedural requirements, thereby commencing the Commission's "sunset" review of those regulations;[8] (4) a new rule governing registration of securities to be sold in a continuous or delayed offering;[9] (5) a rule relating to the responsibility of persons subject to Section 11 of the Securities Act in an integrated disclosure system;[10] (6) s statement of the Commission's policy with respect to the disclosure of security ratings;[11] and (7) amendments to certain Exchange Act forms and schedules[12] to incorporate the new Regulation S-K provisions and make other changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as the continuation of the Commission's "sunset" review of all existing rules and regulations.

I. Technical Amendments

Securities Act Rule 138 and a number of Securities Act forms refer to current Forms S-1, S-7 or S-16. The Commission's proposed deletion of Forms S-7 and S-16 requires corresponding changes in existing form cross-references. For example, Rule 138 makes reference to Forms S-7 and S-9. Since Form S-9 has been rescinded [13] and Form S-7 is proposed to be rescinded and replaced by Form S-2, Rule 138 would be amended to include a reference to Form S-2. Other amendments of a purely technical nature, which are necessitated by the addition or deletion of instructions and disclosure items in the forms, include renumbering and relettering of form provisions in order to maintain the forms' internal consistency.

The Securities Act forms in which the technical amendments described above are proposed to be made are: Forms S-8, S-11, S-14 and S-15. Attention is directed to the proposed texts of these forms and of Rule 138 for the proposed changes.

II. Other Amendments to Securities Act Forms

As part of its integration program, the Commission has reviewed the various Securities Act rules and forms with a view towards making disclosure requirements uniform, to the extent practicable, by substituting the uniform disclosure items of Regulation S-K for existing disclosure items and by eliminating unnecessary and burdensome disclosure items. In addition, the Commission proposes to standardize certain aspects of registration forms under the Securities Act. These changes are in accordance with those proposed in Forms S-1, S-2 and S-3 and affect Forms S-8, S-11, S-14 and S-15.

As amended, each of the aforementioned forms will contain an instruction entitled "Application of General Rules and Regulations," which directs attention to the general regulations under the Securities Act and specifically to Regulation C and Regulation S-K. Although most of the forms currently contain references to Regulation C, the proposed standard instruction eliminates superfluous references to Regulation C and also directs attention to Regulation S-K as the repository of uniform disclosure items. General instructions regarding "Documents Comprising the Registration Statement," "Form and Content of Prospectus" and "Preparation of Prospectus" are proposed to be removed from the forms, because the procedural content of these instructions is included in proposed amendments to Regulation C.[14]

The Commission also proposes to standardize, to the extent practicable, the signature requirements of the forms listed above with the requirements found in proposed Forms S-2 and S-3. The instructions to form signature provisions would make explicit the staff's longstanding position that, where the registrant is a limited partnership and, where a signing general partner is a corporation, a majority of its board of directors also must sign the registration statement. The instructions would also refer to Rule 402 concerning manual signatures and signatures pursuant to

[1] Securities Act Release No. 6332 (August 6, 1981).
[2] Securities Act Release No. 6331 (August 6, 1981).
[3] Securities Act Release No. 6333 (August 6, 1981).
[4] Securities Act Release No. 6331 (August 6, 1981).
[5] This proposal was initially made in Securities Act Release No. 6276 (December 23, 1980) [45 FR 78].
[6] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693].
[7] Securities Act Release No. 6332 (August 6, 1981) (the "Regulation S-K Release"] as originally proposed in Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].
[8] Securities Act Release No. 6333 (August 6, 1981).
[9] Securities Act Release No. 6334 (August 6, 1981). Originally proposed as part of Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].
[10] Securities Act Release No. 6335 (August 6, 1981).
[11] Securities Act Release No. 6336 (August 6, 1981).
[12] Securities Act Release No. 6338 (August 6, 1981).
[13] Securities Act Release No. 5791 (December 20, 1976) [41 FR 56301].
[14] *See* Rules 404 and 421 of Regulation C (17 CFR 230.404, 421).

powers of attorney. Moreover, in light of recently adopted staff procedures under which a registration statement may not be reviewed,[15] the signature provisions of the forms would require a registrant to certify that it meets the requirements for filing on the particular form.

With regard to disclosure, the Commission proposes to substitute references to proposed items in Regulation S–K for the current requirements of Regulation C and the Guides. For example, three of the items to be added to the forms refer to proposed Items 501, 502 and 503 of Regulation S–K, which are derived from the Guides and Regulation C, as well as from the uniform disclosure items proposed in Form A. Item 501 (Forepart of Registration Statement and Outside Front Cover Page of Prospectus) sets forth information which must appear on the outside front cover page of a prospectus and on the facing page of a registration statement. The requirements of Item 501 include the presentation of information regarding the registrant and the offering, including the legends and other information which constitute the usual format of the cover page of a prospectus. Item 502 (Inside Front and Outside Back Cover Pages of Prospectus) sets forth requirements for information appearing on the inside front and the outside back cover pages of the prospectus. Item 502 requires registrants, where appropriate, to make certain statements regarding stabilization and other matters. Item 503 (Summary Information and Risk Factors) describes the requirements applicable to any summary and list of risk factors which may, where appropriate, be included in the prospectus.

Forms S–11, S–14 and S–15 contain an item in Part II (information not required in the prospectus) of the registration statement calling for disclosure with respect to the interests of experts and counsel named in the prospectus. The Commission proposes to revise this item to refer to proposed Item 509 of Regulation S–K, and to move this item to Part I (information required in prospectus) of these forms because it believes that such disclosure is more appropriate for presentation in the prospectus.[16]

The requirements of Part II of the forms also are modified in the following respects: to include the information regarding indemnification previously required by Guide 46 by means of a specific form item referring to proposed Item 510 of Regulation S–K; to eliminate undertakings from the forms and consolidate them in proposed Item 512 of Regulation S–K; and to eliminate exhibit requirements from the forms and consolidate them in proposed Item 601 of Regulation S–K.

Proposed amendments to the forms are discussed below.

Form S–8. With regard to the General Instructions of Form S–8, the Commission proposes to make a number of changes. In addition to adding the standardized paragraphs on the Application of General Rules and Regulations, these changes would include removing General Instructions C and D because their contents are to be shifted to amended Regulation C. General Instructions E and F therefore would be redesignated as General Instructions C and D. General Instruction A(2) would be amended to clarify the fact that it is unnecessary to file a Form 11–K if a plan has not been in existence for at least 90 days prior to the date of filing of the registration statement. Redesignated General Instruction C (Unavailability of the Form S–8 Prospectus for Reoffers or Resales) would be amended to refer to proposed Rule 462A, which sets out specific requirements concerning all secondary offerings of securities to be made on a delayed or continuous basis, and to delete provisions which are inconsistent with that proposal.

The Commission also is proposing amendments to disclosure items of Form S–8. Along with the addition of Items 501, 502 and 503 of proposed Regulation S–K as new Items 1, 2 and 3 of Form S–8, paragraphs (b) and (c) of current Item 11 (Securities to be Registered) would be replaced and retitled with a reference to proposed Item 202 of Regulation S–K (Description of Registrant's Securities), which would require substantially the same information regarding the registrant's securities.[17]

Current Item 12 would be revised to delete certain requirements which are proposed to be relocated in Regulation C. Notably, the instruction in current Item 12 regarding consents with respect to inclusion of material incorporated by reference is proposed to be included in Rule 439 of Regulation C (17 CFR 230.439). Item 12 also would be amended to eliminate the requirement to incorporate by reference information from a proxy or information statement. This amendment is consistent with proposed Form S–3 and reflects the Commission's belief that direct incorporation of proxy material would be unnecessary since Form 10–K (17 CFR 249.310) would include relevant proxy information, through incorporation by reference in most cases. Correspondingly, references to such proxy or information statements would be deleted from current Item 13. A new Item 18 (Indemnification of Directors and Officers) referring to proposed Item 510 of Regulation S–K would be added to Part II of Form S–8.

Both sections of the Undertakings provision of the Form are proposed to be changed. The first paragraph is amended to refer to the Undertakings provision of Regulation S–K, Item 512, which requires the same undertaking. The second paragraph is eliminated, because it is duplicative of proposed Item 512. An instruction has been added which notes that in many of those situations where annual updating cannot be completely accomplished through the filing of Exchange Act periodic reports,[18] staff practice allows registrants to utilize an "appendix" to the prospectus for this purpose.[19]

Finally, in other proposed amendments to Form S–8, the signatures provision of the Form would be changed to adopt the signatures format of other Securities Act forms and the Instructions as to Exhibits would be replaced by a new Item 19 referring to Item 601 (Exhibits) of Regulation S–K.

Form S–11. Changes similar to those proposed for other Securities Act forms are proposed to be made in the General Instructions section of Form S–11. The standard Application of General Rules and Regulations paragraphs are added. Paragraphs which are repetitive of requirements found in Regulation C are proposed to be deleted and the General Instructions redesignated accordingly. Further, the signatures clause would be amended to make Form S–11 consistent with other Securities Act forms.

With respect to disclosure, the Commission is proposing to delete certain items from Form S–11 and to replace those items with new items that contain references to uniform disclosure items of Regulation S–K that require substantially the same information.[20] As

[15] *See* SEC News Digest (November 17, 1980).

[16] *See*, Guide 56 and the text and discussion of proposed Item 509 in the Regulation S–K Release.

[17] Also, the definition of executive officer in current Item 2 would be replaced by the uniform definition proposed to be added to Regulation C.

[18] *See* Securities Act Release No. 6202 (April 2, 1980) [45 FR 23653].

[19] *See* Securities Act Release No. 6281 (January 15, 1980) [46 FR 8446].

[20] Certain items in Form S–11 currently contain references to Regulation S–K items and are proposed to be amended to conform the references to the proposed revision of Regulation S–K. Current Items 16 (Legal Proceedings), 18 (Security Ownership of Certain Beneficial Owners and Management), 19 (Directors and Executive Officers), 20 (Management Remuneration and Transactions) and 32 (Financial Statements and Exhibits) will now refer, respectively, to Items 103, 403, 401, 402 and

Continued

necessitated by these and other proposed amendments, the Commission is proposing to renumber the items in Form S–11.

The items in Form S–11 which are proposed to be replaced by uniform disclosure items of Regulation S–K in the manner described above are: Item 2 (Plan of Distribution), to be replaced (with the heading remaining the same) with a new Item 7 referring to proposed Item 508 of Regulation S–K (also entitled Plan of Distribution); Item 3 (Use of Proceeds to Registrant), to be replaced (with the heading remaining the same) with a new Item 8 referring to proposed Item 504 of Regulation S–K (Use of Proceeds); Item 6 (Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations), to be replaced with new Items 9 and 10 referring to proposed Items 301 (Selected Financial Data) and 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations) of Regulation S–K; Item 13 (Description of Shares Being Registered), Item 14 (Long-term Debt Being Registered) and Item 15 (Other Securities Being Registered) to be replaced with a new Item 18 referring to proposed Item 202 of Regulation S–K (Description of Registrant's Securities); Item 25 (Other Expenses of Issuance and Distribution), to be replaced (with the heading remaining the same) with a new Item 28 referring to proposed Item 511 of Regulation S–K (also entitled Other Expenses of Issuance and Distribution); Item 26 (Relationship with Registrant of Experts Named in Registration Statement), to be replaced with a new Item 27 to be located in the prospectus, referring to proposed Item 509 of Regulation S–K (Interest of Named Experts and Counsel); Item 28 (Recent Sales of Unregistered Securities), to be replaced (with the heading remaining the same) with a new Item 30 referring to proposed Item 701 of Regulation S–K (also entitled Recent Sales of Unregistered Securities); Item 30 (Indemnification of Directors and Officers), to be replaced (with the heading remaining the same) with a new Item 31 referring to proposed Item 510 of Regulation S–K (also entitled Indemnification of Directors and Officers); and the Undertakings section of Form S–11, which will be replaced with a new Item 34 referring to proposed Item 512 of Regulation S–K (Undertakings).

As in other forms, the Commission is proposing to add to Form S–11 three new items (to be designated Items 1, 2 and 3) referring to proposed Items 501, 502 and 503 of Regulation S–K. Other proposed additions necessary to retain the same disclosure requirements currently pertaining to Form S–11 include new Items 4, 5 and 17 which refer, respectively, to proposed Items 505 (Determination of Offering Price), 506 (Dilution) and 201 (Market Price of and Dividends on the Registrant's Common Stock and Related Stockholder Matters) of Regulation S–K. Further, the Commission is proposing to delete Item 1 of Form S–11 (Distribution Spread;). Item 1 would be replaced, in large part, by the addition of new Item 1 (Forepart of Registration Statement and Outside Front Cover Page of Prospectus) and new Item 7 (Plan of Distribution), which require almost all of the information required under current Item 1. The remainder of the information required by current Item 1 would now be required by new Item 6, to be entitled Selling Security Holders, which refers to proposed Item 507 of Regulation S–K (also entitled Selling Security Holders). Similarly, the Commission is proposing to delete current Items 17 (Parents of Registrant) and 29 (Subsidiaries of Registrant). Deletion of the Subsidiaries item is proposed because equivalent information will be available in the Exhibits to the Form pursuant to Item 601 of proposed Regulation S–K, which requires registrants to attach a list of subsidiaries as an exhibit to the filing. Deletion of the item regarding parents is proposed because such information would, in almost all instances, be disclosed under new Item 20 of Form S–11 (Security Ownership of Certain Beneficial Owners and Management). The Commission also is proposing to delete current Items 4 (Sales Otherwise than for Cash) and 5 (Capital Structure) of Form S–11. The information required by Item 4 is now included in that required by proposed Item 508 of Regulation S–K, a reference to which is proposed to be made in new Item 7 (Plan of Distribution) of the Form. Consistent with the approach taken in Forms S–1, S–2 and S–3, current Item 5 would be omitted from Form S–11 because the information it requires is readily available from other sources within the registration statement.

Finally, the Supplemental Information provision is deleted except for paragraph (c), which is proposed to be added as an Instruction to new Item 9. The remainder of this information is specifically mentioned in proposed Rule 419 of Regulation C or is no longer necessary. Consistent with the Commission's approach to Supplemental Information in proposed Rule 419 of Regulation C, the information noted in the Instruction would have to be furnished only upon request of the registrant.

Form S–14. Changes similar to those proposed in other Securities Act forms also are proposed for Form S–14.[21] The Commission proposes to add the standard paragraphs regarding the Application of General Rules and Regulations to Form S–14, while removing general instructions which would be relocated in amended Regulation C. The signatures clause is proposed to be amended in accordance with other form signature clauses. With respect to disclosure, it is proposed to insert as the first three items of Form S–14 new items which refer to proposed Items 501, 502 and 503 of Regulation S–K. In connection with this change, the Commission specifically inquires whether the inclusion of new items referring to Items 501, 502 and 503 would be confusing or would diminish registrants' flexibility to combine proxy statements and prospectus disclosure in proxy statement format.

The Commission proposes to delete the following Form S–14 disclosure items and replace them with new items referring to substantially similar uniform disclosure items in Regulation S–K: Item 3 (Interest of Experts Named in Registration Statement), to be relocated in the prospectus and replaced with a new Item 8 (Interests of Named Experts and Counsel) referring to Item 509 of Regulation S–K (also entitled Interests of Named Experts and Counsel); Item 4 (Indemnification of Directors and Officers), to be replaced (with the heading remaining the same) with a new Item 9 referring to proposed Item 510 of Regulation S–K (also entitled Indemnification of Directors and Officers); Item 5 (Exhibits Filed) to be replaced with a new Item 10 (Exhibits) referring to Item 601 of Regulation S–K (also entitled Exhibits); and Item 6 (Undertaking to File Prospectuses as Amendments), to be replaced by a new Item 11 (Undertakings) referring to proposed Item 512 of Regulation S–K (also entitled Undertakings).

In addition, the Commission proposes to delete paragraph (c) of current Item 1

601 of Regulation S–K, which, with the exception of Item 601, have the same titles as the Form S–11 items. Current Item 24 (Financial Statements and Supplementary Data) will now refer to Items 302 (Supplementary Financial Information) and 304 (Disagreements with Accountants on Accounting and Financial Disclosure) of Regulation S–K, which encompass the information required by current Item 12 of Regulation S–K.

[21] It should be noted that, in addition to proposing the changes discussed herein, the Commission is reexamining the disclosure requirements of Form S–14 as part of its separate business combination project.

of Form S–14, which states that the information called for by Rule 426 (Statement as to Stabilizing, 17 CFR 230.426) need not be specified in the prospectus. In the proposed revision of Regulation C, Rule 426 is proposed to be deleted. Its contents are included in proposed Item 502 of Regulation S–K, which prescribes stabilization disclosure only where appropriate. Thus, paragraph (c) of current Item 1 is no longer necessary.

Finally, the Commission proposes to add new Items 4 and 5, which refer respectively to proposed Items 201 (Market Price of and Dividends on the Registrant's Common Stock and Related Stockholder Matters) and 506 (Dilution) of Regulation S–K.

Form S–15. The Commission is proposing to amend Form S–15 in a fashion similar to the other Securities Act form amendments discussed above. Thus, the standard general instruction as to the Application of General Rules and Regulations is proposed to be added and a superfluous instruction would be deleted. As with the other Securities Act forms, the Commission is proposing to conform the signatures clause of Form S–15 with the signatures provisions to be found in proposed Forms S–2 and S–3. Items containing references to Regulation S–K would be updated, where appropriate. Redesignated General Instruction D (Availability of the Prospectus for Reoffers or Resales) would be amended to refer to proposed Rule 462A, which sets out specific requirements concerning all secondary offerings of securities to be made on a delayed or continuous basis, and to delete provisions which are inconsistent with that proposal.

Consistent with changes in the other forms, items referring to proposed Items 501 and 502 of Regulation S–K would be added to Form S–15. In addition, the registrant's address and telephone number and risk factors are proposed to be added to the summary item (new Item 3). As noted above with regard to the addition of Items 501, 502 and 503 to Form S–14, the Commission specifically inquires whether the inclusion in Form S–15 of new Items 1 and 2 referring to Items 501 and 502 of proposed Regulation S–K would be confusing or would diminish registrants' flexibility to combine proxy statements and prospectus disclosure in proxy statement format.

The Commission also is proposing to delete and renumber Items 12 (Undertaking to File Prospectuses as Amendments) and 13 (Interest of Experts Named in Registration Statement) of Form S–15 and to replace them with new Items 16 (Undertakings) and 13 (Interests of Named Experts and Counsel), which refer to Items 512 and 509 of Regulation S–K, respectively, and require substantially the same information. New Item 13 would be located in the prospectus, in accordance with Commission practice in other forms. A new Item 14 (Indemnification of Directors and Officers) referring to Item 510 of proposed Regulation S–K would be added to Form S–15, while current Item 10 (Undertaking to Transmit Certain Material) would be deleted because the undertaking it requires would be encompassed in new Item 16 (Undertakings).

The other changes to Form S–15 are related to corresponding changes in proposed Form S–2. The first change is with respect to the option of providing updating information by delivering the issuer's latest Form 10–Q. In response to commentators' concerns regarding a loss of flexibility, the Commission has deleted from proposed Form S–2 the instruction which would have required that a Form 10–Q used to accompany a prospectus be filed at least ten days prior to effectiveness of the registration statement. The same instructions are being deleted from new Items 8(a) and 9(a) of Form S–15. At the same time, however, the Commission is proposing an amendment to Rule 402(a)(2) in the Regulation C Release for the same staff processing purposes that prompted the now deleted instruction. Rule 402(a)(2) would require that copies of Form 10–Q reports which registrants using Form S–2 or S–15 have chosen to deliver with the prospectus in lieu of prospectus reiteration must be included with all copies of the registration statement filed with the Commission.

Second, the Commission has added the informal quarterly report (if delivered with the prospectus) to the documents which must be incorporated by reference in Form S–2. Similarly, new Item 12 of Form S–15 (Incorporation of Certain Information by Reference) is amended to require incorporation by reference of the informal quarterly report, if delivered with the prospectus.

Third, the incorporation by reference provisions of Form S–15 are proposed to be changed to correspond to changes proposed to be made in Form S–2. As discussed in the release proposing Form S–2, the Form S–15 incorporation by reference item (new Item 12) now would be contained in Part I of the Form and would require incorporation of the specified reports and information by reference into the prospectus itself rather than into Part II of the registration statement.[22] In addition, like Form S–2, Form S–15 would require the prospectus to contain the detailed description listing all material incorporated by reference therein. This change is in response to commentator views that this information is most appropriately placed in the prospectus itself in order to inform investors as to other documents or information deemed part of the prospectus.

Finally, new Items 8 (Additional Information With Respect to the Issuer) and 9 (Additional Information With Respect to the Company Being Acquired) are proposed to be amended to indicate, consistent with Form S–2, that financial information maybe required in the prospectus where there has been a correction of an error or a material disposition of assets outside the normal course of business, as well as where there has been a significant business combination or a change in accounting principles.

III. Rescission of Forms S–7 and S–16 and Replacement of Existing Form S–2

In a separate release published today, the Commission has proposed new Forms S–2 and S–3 as part of its reorganized system for the registration of securities under the Securities Act. Accordingly, the Commission is proposing to rescind Forms S–7 and S–16 and to replace existing Form S–2.

IV. Rescission of Certain Obsolescent Forms

The Commission is proposing to eliminate a number of infrequently used Securities Act registration forms. In most cases, filings on the affected forms are so rarely made that the Commission questions the need to retain such forms and believes that the forms can be eliminated without detriment to any registrant. In this category are the following forms, which are proposed for rescission: Form C–2 (for Certain Types of Certificates of Interest in Securities); Form D–1 (for Certificates of Deposit); Form D–1A (for Certificates of Deposit Issued by Issuers of Securities Called For Deposit); and Form S–13 (for Registration under the Securities Act of 1933 of Voting Trust Certificates). The Commission also proposes to rescind Form S–10 (for Oil or Gas Interests or Rights), which is outdated and rarely used. Disclosure in the oil and gas area is currently under study and the Commission anticipates that a new form for registration of such securities may be

[22] Existing Forms S–8 and S–16 both require incorporation by reference into the prospectus, Part I of the registration statement.

proposed in the future. The Commission specifically urges commentators to state their views regarding the proposed form rescissions.

V. Rule 135

In connection with its proposed revision of Regulation S–K and Guides, the Commission proposed to delete Guide 51 (Release of Price Data on Subscription Offerings by Listed Companies) and include its substance as a paragraph of Rule 135 (Notice of Certain Proposed Offerings).[23] The new paragraph of Rule 135 would permit dissemination of price data on subscription offerings pursuant to specified conditions. Although the two commentators who offered an opinion on this proposal suggested that the matters which may be disclosed on the Dow Jones broad tape be expanded, the Commission believes that expansion of data disclosed beyond the limits of Guide 51 is inappropriate at this time. However, the Commission solicits further public comment and is reproposing the amendment to Rule 135.

VI. 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 amendments proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding paragraph (c) to § 230.135 to read as follows:

§ 230.135 Notice of certain proposed offerings.

* * * * *

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed on a national securities exchange, information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange or the Dow Jones broad tape, provided such information is already disclosed in a registration statement on file with the Commission.

2. By revising § 230.138 to read as follows:

§ 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

(a) Where a registrant which meets all of the conditions for the use of Form S–2 (§ 239.12 of this chapter) has filed or proposes to file a registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication, or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to common stock or to debt or preferred stock convertible into common stock of such issuer shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 59(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

(b) Where a registrant which meets all of the conditions for the use of Form S–2 (§ 239.12 of this chapter) has filed or proposes to file a registration statement under the Act relating solely to common stock or to debt or preferred stock convertible into common stock, the publication or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to a nonconvertible debt security, or to a nonconvertible nonparticipating preferred stock shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.4 [Removed]

3. By removing § 239.4;

§ 239.6 [Removed]

4. By removing § 239.6;

§ 239.7 [Removed]

5. By removing § 239.7;

6. By revising § 239.12 to read as follows:

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

This form may be used for registration of securities under the Securities Act of 1933 which are offered or to be offered in any transaction other than an exchange offer for securities of another person by any registrant which meets the following conditions:

(a) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

(b) 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;

(c) The registrant: (1) has been subject to the requirements of section 12 of 15(d) of the Exchange Act and has filed all the information required to be filed pursuant to section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule; and

(d) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (1) failed to pay any dividend or sinking fund installment on preferred stock; or (2) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its

[23] See Guides Release, 46 FR 100.

consolidated and unconsolidated subsidiaries, taken as a whole.

(e) A foreign private issuer which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in (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 paragraph (c) of this section.

(f) If a registrant is a successor registrant it shall be deemed to have met conditions in paragraphs (a), (b), (c) and (d) of this section if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor of forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(g) If a registrant is a majority-owned subsidiary it shall be deemed to have met the conditions of these eligibility requirements 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.

7. By adding § 239.13 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.

This form may be used by any registrant which meets the requirements of paragraph (a) of this section for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in paragraph (b) of this section, provided that the requirements applicable to the specified transaction are met.

(a) *Registrant requirements.* All registrants must meet the following conditions in order to use this Form S–3 for registration under the Securities Act of securities offered in the transactions specified in (b) of this section:

(1) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or 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;

(3) The registrant: (i) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the information required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) [17 CFR 240.12b–25(b)] under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(5) A foreign private issuer which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in (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 (a)(3) of this section.

(6) If the registrant is a successor registrant, it shall be deemed to have met conditions in paragraph (a) (1), (2), (3), and (4) of this section if: (i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(7) If a registrant is a majority-owned subsidiary it shall be deemed to have met the conditions of these registrant eligibility requirements (or the conditions of the Transaction Requirements in paragraph (b) of this section 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.

(b) *Transaction requirements.* Security offerings meeting the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and secondary offerings by certain registrants.*

Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities, *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $150 million or more.

Instructions. The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. [See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405)].

(2) *Primary offerings of certain debt securities.*

Non-convertible debt securities to be offered for cash by or on behalf of a registrant, provided such debt securities are "investment grade debt securities," as defined below. A non-convertible debt security is an "investment grade debt security" if, at the time of effectiveness of the registration statement, it has been rated in one of the four highest rating categories for debt by at least one nationally recognized statistical rating organization (as that term is used Rule 15c3–1(c)(2)(vi)(E)

under the Securities Exchange Act of 1934 [17 CFR 240.15c3–1(c)(2)(vi)(E)]).

(3) *Securities registered on form S–8.* Securities offered by affiliates for resale pursuant to the conditions specified in General Instruction C to Form S–8 (17 CFR 239.16b).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions or warrants.*

Securities to be offered: (i) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach; or (ii) pursuant to a dividend or interest reinvestment plan; or (iii) 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; provided the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, material containing the information required by Rule 14a–3(b) [(17 CFR 240.14a–3(b))] under the Exchange Act and Items 401, 402, and 403 of Regulation S–K (17 CFR 229.400) within the twelve calendar months immediately preceding the filing of the registration statement, except that the information required by Items 401, 402 and 403 of Regulation S–K need only be provided to holders of rights exercisable for common stock, holders of securities convertible into common stock, participants in plans which may invest in common stock, or in securities convertible into common stock or warrants exercisable for common stock, respectively.

8. By removing General Instructions C and D and redesignating General Instructions E and F as General Instructions C and D; by adding Items 1–3 and 17–20; by redesignating Items 1–13 accordingly; and by otherwise amending § 239.16b to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

A. Rule as to Use of Form S–8

* * * * *

(2) Where interests in a plan are being registered and the plan's latest annual report filed pursuant to Section 15(d) of the Securities Exchange Act is to be incorporated by reference pursuant to the requirements of Form S–8, the Plan shall either: (i) have been subject to the requirement to file reports pursuant to Section 15(d) for the prior 90 days and shall have filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports and materials) or (ii) if the plan has not previously been subject to the reporting requirements of Section 15(d), concurrently with the filing of the registration statement on Form S–8 the plan shall file an annual report in the form required under Section 15(d) for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing date), provided that if the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an annual report shall not apply. [See instructions to Form 11–K and Rule 15d–21 (17 CFR 240.15d–21)].

B. Application of General Rules and Regulations

(1) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements. For purposes of this Form the term "employee" is defined as any director, trustee, officer or other employee. The term "issuer" as used in this Form means the person whose securities are to be offered pursuant to the plan.

(2) Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate.

C. Unavailability of the Form S–8 Prospectus for Reoffers or Resales

The Form S–8 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer, as defined in Rule 405 under the Act. However, such affiliates may reoffer or resell such securities pursuant to registration under Rule 462A (17 CFR 230.462A) by means of a separate prospectus, filed with the registration statement on this Form S–8, that is prepared in the following manner:

(1) Such prospectus may be prepared in accordance with the requirements of Form S–3 if:

(a) The issuer, at the time of filing such prospectus, satisfies the Registrant Requirements for use of Form S–3; or

(b) * * *

(2) If subparagraph (1), above, does not permit the use of a prospectus on Form S–3, registered reoffers or resales must be made by means of a separate registration statement utilizing whichever form is applicable.

Notes:

1. Registered securities may be included in a reoffer prospectus if they have been or will be acquired by the selling security holder pursuant to the plan. If after the effective date the issuer wishes to add any person who has acquired or will acquire any registered securities pursuant to the plan to the list of selling shareholders, the issuer may do so by filing a post-effective amendment.

2. Unregistered securities issued pursuant to the plan prior to the effective date of the first registration statement covering securities issued pursuant to the plan may be included in a reoffer prospectus, if each of the following conditions has been met:

(a) Such securities were issued in accordance with a lawful exemption from registration, and the issuer files as an exhibit a statement indicating the section of the Securities Act or Rule of the Commission under which exemption from registration was claimed, which statement shall set forth briefly the facts relied upon to make the exemption available.

(b) The prospectus indicates the number of previously unregistered shares being reoffered and such number does not exceed ten percent of the total number of shares issuable under the plan.

(c) All persons (including non-affiliates) holding unregistered shares to be reoffered pursuant to the prospectus are named as selling shareholders in the prospectus; *Provided, however,* That any non-affiliate who holds less than the lesser of 400 shares or 1% of the shares issuable under the plan need not be named if the prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to 400 shares, may use the prospectus for reoffers and resales.

3. The term "person" as used in General Instruction C shall be the same as is set forth in Rule 144(a)(2) under the Act.

D. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

* * * * *

Part I. Information Required in Prospectus

Item 1. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.*

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.500).

Item 4. *General Information Regarding the Plan.*

* * * * *

Item 5. *Securities to be Offered and Employees Who May Participate in the Plan.*

* * * * *

Item 6. *Purchase of Securities Pursuant to the Plan.*

* * * * *

Item 7. *Payment for Securities Offered.*

* * * * *

Item 8. *Contributions Under the Plan.*

* * * * *

Item 9. *Withdrawal from the Plan—Assignment of Interest.*

* * * * *

Item 10. *Defaults Under the Plan.*

* * * * *

Item 11. *Administration of the Plan.*

* * * * *

Item 12. *Investment of Funds.*

* * * * *

(d) * * *

Instructions to Item 12(d).

* * * * *

Item 13. *Charges and Deductions and Liens Therefor.*

(a) Describe all charges and deductions (other than deductions described in Item 7(a) and taxes), which may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part thereof. Such description should include charges and deductions which may be made upon the termination of an employee's interest in the plan, or upon partial withdrawals from the employee's account thereunder.

* * * * *

Item 14. *Description of Registrant's Securities.*

(a) If capital stock is to be registered hereunder, and such class of stock is already registered under Section 12 of the Securities Exchange Act of 1934, comply with Item 15(c).

(b) If capital stock is to be registered hereunder, and such class of stock is not registered under Section 12 of the Securities Exchange Act of 1934, furnish the information required by Item 202 of Regulstion S–K (17 CFR 229.200).

Item 15. *Incorporation of Certain Documents by Reference.*

The issuer and, where interests in the plan are being registered, the plan, shall incorporate by reference into the prospectus the documents listed in (a) through (c) below and shall state that all documents subsequently filed by them pursuant to Sections 13, 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the prospectus and to be a part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) * * *

* * * * *

(c) If the class of securities to be offered is registered under Section 12 of the Securities Exchange Act of 1934, the description of such class of securities which is contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Item 16. *Additional Information.*

Describe any 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 an annual report or prospectus incorporated by reference in response to Item 15(a) and which have not been, nor will be, described in a timely-filed report on Form 8–K or 10–Q (17 CFR 249.308 and 249.308a).

Item 17. *Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

Part II. Information Not Required in Prospectus

Item 18. *Indemnification of Directors and Officers.*

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.500).

Item 19. *Exhibits.*

Furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

Item 20. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Instruction: In most cases, annual updating can be accomplished by utilizing Exchange Act periodic reports. (*See* Securities Act Release No. 6202 (April 2, 1980) [45 FR 23653].) However, in many of those situations where annual updating cannot be completely accomplished through the filing of Exchange Act periodic reports, the staff has indicated that registrants may utilize an "appendix" to the prospectus for this purpose. (*See* Securities Act Release No. 6281 (January 15, 1981) [46 FR 8446].)

Signatures

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it meets all of the requirements for filing on Form S–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, State of ————, on ————, 19——.

(Registrant) ————

By (Signature and Title) ————

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

(Signature) ————

(Title) ————

(Date) ————

The Plan. Pursuant to the requirements of the Securities Act of 1933, the plan has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, State of ————, on the ———— day of ——, 19——.

————

(The Plan)

By ————

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capabilities and on the dates indicated.

————

(Signature)

————

(Title)

————

(Date)

Instructions. 1. The registration statement shall be signed by the registrant (and where interests in the plan are being registered, by the plan), their principal executive officer or officers, their principal financial officer, their controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the signing person is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the signing person 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

§ 239.17 [Removed].

9. By removing § 239.17;

10. By removing General Instructions C, D and F, Items 1, 4–6, 13–15, 17, 29 and Instructions As to Exhibits; by adding Items 1–6, 9–10, 17–18 and 31; by redesignating the General Instructions and Items to reflect additions and removals; by revising redesignated Items 7–8, 27–28 and 30–31; and by otherwise amending § 239.18 to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

B. Application of General Rules and Regulations

(a) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

(b) Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate.

C. Exchange Offers

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus also shall include the information which would be required by Items 9 to 16, and Item 18 if securities of such other issuer were being registered on this form. Item 26 also shall be answered as to any promoter, director, officer or security holder of such other issuer who is an affiliated person of the registrant.

D. *Definitions*

* * * * *

Part I. Information Required in Prospectus

Item 1. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

(a) Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.500).

(b) If there are any limitations on the transferability of the securities being registered, so state on the outside front cover page of the prospectus and refer to a statement elsewhere in the prospectus as to the nature of such limitations. If there is no market for securities of the same class as those being registered, so state on the outside front cover page of the prospectus; otherwise, state elsewhere in the prospectus the nature of the market for such securities and the market price thereof as of the latest practicable date prior to the filing of the registration statement or amendment thereto.

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.*

(a) Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.500).

(b) Where appropriate to a clear understanding by investors, an introductory statement shall be made in the forepart of the prospectus, in a series of short, concise paragraphs, summarizing the principal factors which make the offering speculative. Where appropriate, statements with respect to the following shall also be set forth:

(1) A comparison in percentages of the securities being offered to the public and those issued or to be issued to affiliated persons;

(2) The extent to which security holders may be liable for the acts or obligations of the registrant;

(3) Allocation of cash distributions between the public security holders and security holders who are affiliated persons;

(4) The remuneration and other forms of compensation and benefits to be received, directly or indirectly, by affiliated persons, including in the case of underwriters a comparison of the aggregate compensation to be received by them with the aggregate net proceeds from the sale of the securities being registered.

Item 4. *Determination of Offering Price.*

Furnish the information required by Item 505 of Regulation S–K (17 CFR 229.500).

Item 5. *Dilution.*

Furnish the information required by Item 506 of Regulation S–K (17 CFR 229.500).

Item 6. *Selling Security Holders.*

Furnish the information required by Item 507 of Regulation S–K (17 CFR 229.500).

Item 7. *Plan of Distribution.*

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.500).

Item 8. *Use of Proceeds.*

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.500).

Item 9. *Selected Financial Data.*

(a) Furnish the information required by Item 301 of Regulation S–K (17 CFR 229.300).

(b) If long-term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long-term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated.

Instruction. If, pursuant to this Item, a statement showing the pro forma taxable operating results of the registrant is included in the registration statement, the Commission or its staff may request as supplemental information, which the registrant should be prepared to furnish promptly upon request, a schedule reconciling such pro forma results with the historical operating results (*see* Rule 3–14 of Regulation S–X).

Item 10. *Management's Discussion and Analysis of Financial Condition and Results of Operations.*

Furnish the information required by Item 303 of Regulation S–K (17 CFR 229.300).

Item 11. *General Information as to Registrant.*

* * * * *

Item 12. *Policy with Respect to Certain Activities.*

* * * * *

Item 13. *Investment Policies of Registrant.*

* * * * *

Item 14. *Description of Real Estate.*

* * * * *

Item 15. *Operating Data.*

Furnish the following information with respect to each improved property which is separately described in answer to Item 14.

* * * * *

(h) * * *

Instruction. Instruction 3 to Item 14 shall apply to this item.

Item 16. *Tax Treatment of Registrant and its Security Holders.*

* * * * *

Item 17. *Market Price of and Dividends on the Registrant's Common Stock and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S–K (17 CFR 229.200).

Item 18. *Description of Registrant's Securities.*

Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Item 19. *Legal Proceedings.*

Furnish the information required by Item 103 of Regulation S–K (17 CFR 229.100).

Item 20. *Security Ownership of Certain Beneficial Owners and Management.*

Furnish the information required by Item 403 of Regulation S–K (17 CFR 229.400).

Item 21. *Directors and Executive Officers.*

Furnish the information required by Item 401 of Regulation S–K (17 CFR 229.400).

Item 22. *Management Remuneration and Transactions.*

Furnish the information required by Item 402 of Regulation S–K (17 CFR 229.400).

Item 23. *Selection, Management and Custody of Registrant's Investments.*

* * * * *

Item 24. *Policies with Respect to Certain Transactions.*

* * * * *

Item 25. *Limitations of Liability.*

* * * * *

Item 26. *Financial Statements and Information.*

Include in the prospectus the financial statements required by Regulation S–X, the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300) and the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K. Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–12, 12–28 and 12–29 of the Regulation may be omitted from the prospectus.

Item 27. *Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

Part II. Information not Required in Prospectus

Item 28. *Other Expenses of Issuance and Distribution.*

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.500).

Item 29. *Sales to Special Parties.*

* * * * *

Item 30. *Recent Sales of Unregistered Securities.*

Furnished the information required by Item 701 of Regulation S–K (17 CFR 229.700).

Item 31. *Indemnification of Directors and Officers.*

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.500).

Item 32. *Treatment of Proceeds from Stock Being Registered.*

* * * * *

Item 33. *Financial Statements and Exhibits.*

(a) List all financial statements filed as part of the registration statement, indicating those included in the prospectus.

(b) Furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

Item 34. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it meets all of the requirements for filing on Form S–11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19—.

(Issuer) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions. 1. 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, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

11. By removing General Instruction C and redesignating General Instructions D and E as General Instructions C and D; by adding Items 1–5 and redesignating Items 1–6 as Items 6–11; by revising redesignated Items 8–11; by removing Instructions as to Exhibits; and by otherwise amending § 239.23 to read as follows:

§ 239.23 Form S-14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145].

* * * * *

B. Application of General Rules and Regulations

(a) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

(b) Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

C. Compliance with Proxy or Information Rules

* * * * *

D. Cross Reference Sheet

* * * * *

Part I. Information Required in Prospectus

Item 1. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.*

Furnish the information required by Item 503 of Regulation S-K (17 CFR 229.500).

Item. 4. *Market Price of and Dividends on the Registrant's Common Stock and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S-K (17 CFR 229.200).

Item 5. *Dilution.*

Furnish the information required by Item 506 of Regulation S-K (17 CFR 229.500).

Item 6. *Information Required by Proxy or Information Rules.*

* * * * *

(b) If neither the registrant nor any other person which is a party to the transaction in which the securities to be registered are to be issued is required to solicit proxies pursuant to Section 14(a), or to furnish information to security holders pursuant to Section 14(c), of the Securities Exchange Act of 1934 in regard to the transaction, then the prospectus shall contain the information which would be required to be included in a proxy or information statement of the registrant if it were subject to Section 14(a) or 14(c) and may be in form of such a proxy or information statement.

Item 7. *Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.*

* * * * *

Item 8. *Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S-K (17 CFR 229.500).

Part II. Information Required in Prospectus

Item 9. *Indemnification of Directors and Officers.*

Furnish the information required by Item 510 of Regulation S-K (17 CFR 229.500).

Item 10. *Exhibits.*

Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S-K (17 CFR 229.600).

Item 11. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S-K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it meets all of the requirements for filing on Form S-14 and had duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19——.

(Issuer) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions. 1. 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, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by 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.

2. 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. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

3. If the securities to be offered are those of a corporation, not yet in existence at the time the registration statement is filed, which will be a party to a consolidaton 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 registrant.

§ 239.25 [Removed].

12. By removing § 239.25;

§ 239.26 [Removed]

13. By removing § 239.26;

§ 239.27 [Removed].

14. By removing § 239.27;

15. By removing General Instruction C and Item 10; by redesignating General Instructions D, E and F as General Instructions C, D and E; by adding Items 1, 2 and 14; by redesignating Items 1–14 as Items 3–16; by revising redesignated Items 11–13, 15 and 16; and by otherwise amending § 239.29 to read as follows:

§ 239.29 Form S-15, optional form for registration of securities to be offered in certain business combination transactions.

* * * * *

General Instructions

A. rule as to Use of Form S-15

* * * * *

2. At the time of filing the registration statement, the issuer (a) meets the requirements for the use of Form S-2 (§ 239.12), (b) has furnished its latest annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3) or Rule 14c-3 (§ 240.14c-3) and (c) such report contains audited year-end financial statements as of a fiscal year-end not more than fifteen months prior to the

date the registration statement becomes effective.

* * * * *

B. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

C. Compliance With Proxy or Information Rules

* * * * *

D. Availability of the Prospectus for Reoffers or Resales

The Form S-15 prospectus may be used by affiliates of the issuer, or by any other persons who may be deemed underwriters of such securities, for reoffers or resales of securities acquired pursuant to this registration statement, Provided that: (1) the requirements of Rule 462A (§ 230.462A) are met; (2) the additional information called for by Item 10 of this Form is included in the prospectus so used; and, (3) if, after the effective date, the issuer wishes to add any person to the list of selling security holders, the issuer may do so by filing a post-effective amendment.

E. Availability and Operation of Form S-15 Prior to Implementation of Revised Annual Report Requirements

On September 2, 1980, the Commission adopted certain amendments to Rule 14a-3 and Regulation S-K, effective for reports with respect to fiscal years ending after December 15, 1980. If all other conditions to the use of Form S-15 are met, the Form may be used prior to such time as those amendments are required to have been implemented by the issuer or, where appropriate, by the company being acquired (See Item 5(a)). In such event, the references in Item 5(b) and Item 12(a) of this Form to (1) supplementary financial information furnished in accordance with the provisions of [revised] Rule 14a-3(b)(3); (2) market for common stock and related security holder matters furnished in accordance with Item 201 of Regulation S-K (17 CFR 229.200); (3) selected financial data furnished in accordance with Item 301 of Regulation S-K (17 CFR 229.300); and (4) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 303 of Regulation S-K (17 CFR 229.300), should be deemed to refer instead to the summary of operations, management's discussion and analysis, and market and securities price data as required by Rule 14a-3 for reports with respect to fiscal years ending prior to December 15, 1980. In addition, the provisions of Item 5(b) and Item 12(a) with respect to financial statements required by Rule 14a-3 shall be deemed to be satisfied by financial statements meeting the requirements of Rule 14a-3 applicable at the time such annual report was prepared.

Part I. Information Required in Prospectus

Item 1. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (17 CFR 229.500).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.500).

Item 3. *Summary Information and Risk Factors.*

(a) Immediately following the cover page of the prospectus, set forth a summary containing the following:

(i) a brief description of the general nature of the business conducted by the issuer and by the company being acquired;

(ii) a brief description of the transaction pursuant to which the securities being registered are to be offered; and

(iii) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the company being acquired, for the following items:

(A) book value per share as of the date of the most recent balance sheet presented in response to Item 5 or incorporated by reference in response to Item 12;

(B) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 5 or incorporated by reference in response to Item 12;

(C) net earnings per share for the year ended as of the same date used for purposes of paragraph (A) of this Item, and for the year to date ended as of the end of the latest corresponding fiscal quarter which ended more than forty-five days prior to the effective date of the registration statement; and

(D) market value of securities as of the day preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into.

(b) *Address and telephone number.* Issuers shall include in the forepart of the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive office.

(c) *Risk factors.* Issuers, where appropriate, shall set forth on the page immediately following the cover page of the prospectus (or following the summary, if included) under an appropriate caption, a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common stock or securities covertible into or exercisable for common stock are being offered, the absence of a previous market for the registrant's common stock.

Item 4. *Terms of the Transaction.*

* * * * *

(e) As to each class of securities of the issuer, or of the company being acquired, which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

Item 5. *Description of the Company Being Acquired.*

(a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3) or Rule 14c-3 (§ 240.14c-3) for its latest fiscal year, then, at the issuer's option, portions of such annual report may be incorporated by reference and such annual report may be delivered in accordance with the provisions of Items 11 and 16 of this Form.

(b) * * *

(ii) market price of and dividends on the common stock of the company being acquired and related stockholder matters as required by Item 201 of Regulation S-K (17 CFR 229.200);

(iii) selected financial data as required by Item 301 of Regulation S-K (17 CFR 229.300);

(iv) management's discussion and analysis of financial condition and results of operation as required by Item 303 of Regulation S-K (17 CFR 229.300);

(v) financial statement as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a-3(b)(1), (b)(2), (b)(3) and (b)(4) (§ 240.14a-3) or Rules 14c-3(a)(1), (a)(2), (a)(3) and (a)(4) (§ 240.14c-3) had the company being acquired been required to prepare such a report; provided, however, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited; and

* * * * *

Item 6. *Voting Information.*

* * * * *

(c) * * *

(ii— *Beneficial Ownership.* Furnish the information required by Item 403 of Regulation S-K (17 CFR 229.400) with respect to both the issuer of the securities being registered and the company being acquired. To the extent that this information is already furnished pursuant to paragraph (a) of this Item, a statement to that effect will suffice.

(iii) *Executive Officers and Directors.* With respect to the issuer, furnish the information

required by Item 401 of Regulation S–K (17 CFR 229.400). With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

Item 7. *Interest of Certain Persons in the Transaction.*

* * * * *

Item 8. *Additional Information With Respect to the Issuer.*

(a) * * *

(iii) delivering to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its security holders and which included the required financial and other information.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders. Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles or a correction of an error where such change or correction requires a substantial retroactive restatement of financial statements where there has been a material disposition of assets outside the normal course of business.

Item 9. *Additional Information With Respect to the Company Being Acquired.*

(a) If the company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, has furnished an annual report to security holders pursuant to Rule 14a–3 for its latest fiscal year, and such annual report is incorporated by reference into and delivered with the prospectus pursuant to the option provided by Item 5(a), provide financial and other information with respect to the company being acquired in the form required by Part I of Form 10–Q as of the end of the most recent of the first three fiscal quarters which ended more than forty-five days prior to the effective date of this registration statement or as of a more recent date by one of the following means:

* * * * *

(iii) delivering to each person to whom a prospectus is delivered a copy of the latest quarterly report which was delivered to the security holders of the company being acquired and which included the required financial and other information.

(b) Describe any and all material changes in the affairs of the company being acquired which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(1) in the annual report to security holders delivered pursuant to Item 16 of this Form; or

(ii) in the prospectus as a result of the provisions of paragraph (b)(v) of Item 5 of this Form.

Financial information may be required in the prospectus if such financial statement do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles or a correction of an error where such change requires a substantial retroactive restatement of financial statements or where there has been a material disposition of assets outside the normal course of business.

* * * * *

(d) * * *

(iii) include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written or oral request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the name, address and telephone number of the person to whom such a written request is to be directed.

Item 10. *Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.*

* * * * *

Item 11. *Information Delivered.*

A statement shall be made indicating that the prospectus is accompanied by the following documents, specified portions of which are incorporated by reference (See Item 12):

(a) the issuer's latest annual report to security holders; and

(b) if the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, has furnished its annual report for its latest fiscal year to security holders pursuant to and meeting the requirements of Rule 14a–3 (§ 240.14a–3) or Rule 14c–3 (§ 240.14c–3), and the issuer has elected pursuant to the option provided by Item 5(a) to incorporate by reference from such annual report and deliver it with the prospectus, such annual report.

Item 12. *Incorporation of Certain Information by Reference.*

(a) The information listed in (i), (ii), (iii) and, if applicable, (iv) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such information:

(i) The following information contained in the annual report(s) to security holders delivered with the prospectus:

(A) description of business furnished in accordance with the provisions of Rule 14a–3(b)(5);

(B) certified financial statement furnished in accordance with the provisions of Rule 14a–3(b);

(C) supplementary financial information furnished in accordance with the provisions of Rule 14a–3(b)(3);

(D) information concerning disagreements with accountants furnished in accordance with the provisions of Rule 14a–3(b)(4);

(E) information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions of Item 101 of Regulation S–K (17 CFR 229.100);

(F) market price of and dividends on issuer's common stock and related stockholder matters furnished in accordance with Item 201 of Regulation S–K (17 CFR 229.200);

(G) selected financial data furnished in accordance with Item 301 of Regulation S–K (17 CFR 229.300); and

(H) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 303 of Regulation S–K (17 CFR 229.300).

(ii) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer on or after the end of the issuer's latest fiscal year reported on in the annual report to security holders delivered with the prospectus pursuant to Item 16 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction described in the registration statement is fully consummated.

(iii) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the company being acquired on or after the end of such company's latest fiscal year as reported on in the annual report to security holders delivered with the prospectus pursuant to Item 16 or as reported on in the prospectus pursuant to Item 5 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction in the registration statement is fully consummated.

(iv) If the issuer elects, pursuant to Item 8(a)(iii), or 9(a)(iii), to deliver a copy of the latest quarterly report which was delivered to its security holders, financial information therein equivalent to that required to be presented in Part I of Form 10–Q.

(b) The issuer may also state, if it so chooses, that specifically described portions of documents which are incorporated by reference are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

Item 13. *Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.500).

Part II: Information not Required in Prospectus

Item 14. *Indemnification of Directors and Officers.*

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.500).

Item 15. *Exhibits.*

Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (17 CFR 229.600).

Item 16. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.500).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer certifies that it meets all the requirements for filing on Form S–15 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly

authorized, in the City of ———, State of ———, on ———, 19 ——.
(Issuer) ———
By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———
(Title) ———
(Date) ———

Instructions. 1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the issuer is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the issuer is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate partner signing the registration statement.

2. The name of such 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. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorneys.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77(s)(a))

Authority

These amendments are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Securities Act Release No. 33–6337 (August 6, 1981) "Integrated Disclosure: Proposed Implementing Amendments to Rules and Forms Under the Securities Act of 1933" will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for such certification are that the proposed amendments will apply only to those entities (including small entities) that are already subject to the Commission's rules and regulations, and will basically only recodify or reorganize requirements already in place.

Dated: August 6, 1981.

John S. R. Shad,

Chairman.

[FR Doc. 81-23444 Filed 8-13-81, 12:56 pm]
BILLING CODE 8010-01-M

17 CFR Parts 230, 240, 249, 250 and 260

[Release Nos. 33–6338; 34–18014; 35–22151; 39–648]

Integrated Disclosure: Proposed Implementing Amendments to Rules, Forms and Schedules Under the Securities Exchange Act of 1934; Proposed Clarification of Safe Harbor rules for Projections Under the Securities Acts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules, forms and schedules.

SUMMARY: The Commission is publishing for comment several proposals relating to its integrated disclosure program. First, certain proposals make technical amendments to various rules, forms and schedules under the Securities Exchange Act of 1934 necessitated by the proposed revision of Regulation S–K, the repository of uniform disclosure items under the Securities Act of 1933 and the Securities Exchange Act of 1934, and by certain other proposed amendments to the general rules applicable to registration and reporting. Second, there are proposed amendments to certain rules, forms and schedules under the Securities Exchange Act of 1934 which are intended to improve and clarify disclosure requirements, to reduce disclosure burdens and to facilitate the integration of disclosure systems. Third, the Commission is proposing to rescind six rarely used forms. Fourth, the safe harbor rules for projections and information on the effects of changing prices under the various securities acts are proposed to be amended to broaden the scope of safe harbor protection granted and to coordinate those rules with the proposed revision of Regulation S–K. Finally, the Commission is reproposing without change amendments relating to disclosure in proxy statements and reproposing amendments relating to delivery of prospectuses.

DATE: Comments must be received on or before October 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comment letters should refer to File No. S7–900. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Collins McCoy (202) 272–2589 or Susan Davis (202) 272–2391, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment the following amendments to rules, forms and schedules under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq.): (1) amendments to Form 8–K, for current reporting, to enhance its value in the integrated disclosure system by complementing reporting on Forms 10–K and 10–Q as well as to streamline and clarify its provisions; (2) technical amendments to Rules 14a–3 (17 CFR 240.14a–3) and 14c–3 (17 CFR 240.14c–3), Forms 10 (17 CFR 249.210), 8–K (17 CFR 249.308), 10–Q (17 CFR 249.308a) and 10–K (17 CFR 249.310) and Schedules 14A (17 CFR 240.14a–101) and 14B (17 CFR 240.14a–102) to conform cross-references to Regulation S–K with the proposed revision of Regulation S–K and to Rules 13e–4 (17 CFR 240.13e–4) and 14d–6 (17 CFR 240.14d–6) to replace references to Guide 59 for the Preparation and Filing of Registration Statements; (3) amendments to Schedule 14A, specifying information required in proxy statements, to improve disclosure in connection with proposals concerning certain authorizations or issuances of securities and the modification or exchange of securities, to delete Appendix A (17 CFR 240.14a–103) and to repropose without change certain amendments relating to business and other relationships between a director and an issuer and the vote required for the election of directors; (4) amendments ot Forms 8–A (17 CFR 249.208a) 8–B (17 CFR 249.208b) and 10, for the registration of securities pursuant to Section 12(b) or (g), to simplify their disclosure requirements by, among other things, incorporating certain uniform disclosure items from Regulation S–K; (5) amendments to Form 10–K, for annual reporting, to require disclosure of certain information relating to a registrant's fourth fiscal quarter; (6) amendments to Form 10–K, Form 10–Q, for quarterly reporting, and Rule 14a–3, concerning information to be furnished security holders, to add provisions concerning integrated reports to shareholders; (7) an amendment to Rule 15c2–8, concerning delivery of prospectuses, to incorporate the "48-hour rule," and (8) rescission of three rarely used registration forms, form 12 (17 CFR 249.212), Form 14 (17 CFR 249.214) and Form 16 (17 CFR 249.216), and three rarely used annual report forms, Form 14–K (17 CFR 249.314), Form

16–K (17 CFR 249.316) and Form 4–MD (17 CFR 249.404).

The Commission also is proposing amendments to Rule 175 (17 CFR 230.175) under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.), rule 3b–6 (17 CFR 240.3b–6) under the Exchange Act Rule 103A (17 CFR 250.103A) under the Public Utility Holding Company Act of 1935 ("Holding Company Act") (15 U.S.C. 79a et seq.) and Rule 0–11 (17 CFR 260.0–11) under the Trust Indenture Act of 1939 ("Trust Indenture Act") (15 U.S.C. 77aaa et seq.) to broaden and clarify the scope of safe harbor protection available thereunder.

The Commission today has proposed or reproposed for comment in separate releases several other rulemaking proposals. These proposals include: (1) a three tier system for the registration of securities, Forms S–1, S–2 and S–3 (originally denominated for comment purposes as Forms A, B and C);[1] (2) expansion of Regulation S–K (17 CFR 229.001 et seq.) to include additional disclosure items and the rescission of Guides for the Preparation of Registration Statements and Reports, other than Guides relating to specific industries, thereby completing the Commission's "sunset" review of the Guides;[2] (3) amendments to Regulation C under the Securities Act (17 CFR 230.400 through 230.494) and Regulation 12B under the Exchange Act (17 CFR 240.12b–1 through 12b–36) to simplify and clarify procedural requirements, thereby commencing the Commission's "sunset' 'review of Regulation C;[3] (4) a new rule governing registration of securities to be sold in a continuous or delayed offering;[4] (5) a rule relating to the responsibility of persons subject to Section 11 of the Securities Act in an integrated disclosure system;[5] (6) a statement of the Commission's policy with respect to the disclosure of security ratings;[6] and (7) amendments to other Securities Act registration forms [7] to incorporate the new Regulation S–K provisions and make other changes. These proposals represent the next major step in the Commission's efforts to achieve a simplified and integrated disclosure system under the Securities Act and the Exchange Act, as well as the continuation of the Commission's "sunset" review of all existing rules and regulations.

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 amendments and rescissions proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

I. Proposed Revision of Form 8–K

The Commission is proposing a number of amendments to Form 8–K, the form for current reports to be filed by companies subject to the continuous reporting requirements of Sections 13(a) and 15(d) of the Exchange Act. These amendments are designed to ensure (1) that the provisions of Form 8–K are consistent with the recently revised provisions of Forms 10–K and 10–Q, and (2) more importantly, that Form 8–K complements the other Exchange Act corporate reporting requirements so that the Exchange Act reporting system produces disclosure sufficiently complete and of sufficiently high quality that it is able to perform its essential role in the Commission's integrated disclosure system. The integrated disclosure system seeks to eliminate duplication and reduce reporting burdens by permitting the continuous disclosure produced in response to the Exchange Act current reporting system to satisfy Securities Act disclosure requirements for public offerings wherever possible.

Section 13(a) of the Exchange Act requires that every issuer of a class of securities registered pursuant to Section 12 file with the Commission such information and documents as the Commission shall require to keep reasonably current the basic corporate information filed when the company goes public.[8] The annual report on Form 10–K is the primary means the Commission employs for keeping corporate disclosure reasonably current. Form 10–Q and 8–K reports augment the basic annual reporting system and keep the corporate information reasonably current by reporting, on a quarterly or more frequent basis, corporate developments which have occurred since the Form 10–K was filed. Having revised Forms 10–K and 10–Q to function effectively in the context of the integrated disclosure system, the Commission is now addressing Form 8–K, the remaining component in the Exchange Act continuous reporting scheme.

Form 8–K is critical because, as the Commission has indicated in the past, it believes that registrants should describe in reports on Form 8–K certain matters about which investors might not otherwise receive adequate and reasonably current information. In addition, registrants are reminded of the obligations of publicly held entities to make full and prompt announcements of material developments relating to the company's financial condition, notwithstanding their compliance with the periodic reporting requirements of the Exchange Act. The failure of public entities to make prompt and accurate disclosure of both favorable and unfavorable new material information to security holders and the investing public may violate the Exchange Act and, in the case of an issuer making a continuous offering of its shares, may also violate the Securities Act if the prospectus is not appropriately updated. Therefore, managements of publicly held entities are urged to continue to consider their policies with respect to disclosure and endeavor to establish procedures which will insure that prompt disclosure be made of all material corporate developments.[9]

a. *General Instructions.* The General Instructions to Form 8–K are proposed to be amended in several respects consistent with the goals and objectives of the integrated disclosure system. First, two revisions would be made in General Instruction B (Events to be Reported and Time for Filing of Reports) to reflect more clearly the critical role Form 8–K plays in maintaining a continuous stream of corporate information through the Exchange Act system. No change is proposed in the requirement that disclosure of certain specified corporate developments be made within 15 days of the event. The provision relating to the time for filing voluntary reports disclosing other material events pursuant to Item 5 (Other Materially Important Events) is proposed to be changed, however, from a requirement to file "within 10 days

[1] Securities Act Release No. 6331 (August 6, 1981), as originally proposed in Securities Act Release No. 6235 (September 2, 1980) [45 FR 63693]. The September 2, 1980 release requested specific comment concerning the impact of various proposals on foreign registrants. The Commission is proposing in a separate release an integrated disclosure system for foreign registrants reporting on Form 20–F.

[2] Securities Act Release No. 6332 (August 6, 1981) ("Regulation S–K Release"), as originally proposed in Securities Act Release No. 6276 (December 23, 1980) [46 FR 78] ("Guides Release").

[3] Securities Act Release No. 6333 (August 6, 1981) ("Regulation C Release").

[4] Securities Act Release No. 6334 (August 6, 1981), originally proposed as part of Securities Act Release No. 6276 (December 23, 1980) [46 FR 78].

[5] Securities Act Release No. 6335 (August 6, 1981).

[6] Securities Act Release No. 6336 (August 6, 1981).

[7] Securities Act Release No. 6337 (August 6, 1981).

[8] Section 15(d) of the Exchange Act extends the reporting obligations imposed by Section 13(a) to issuers who have had a registration statement become effective pursuant to the Securities Act.

[9] *See* Securities Exchange Act Release No. 13156 (January 13, 1977) and Securities Act Release No. 5092 (October 15, 1970).

after the close of the month during which the event occurred" to a flexible requirement indicating that reporting pursuant to Item 5 is optional and that there is correspondingly no mandatory time for filing. The instruction also encourages registrants to file promptly following the event. The Commission believes the amended provision to be more appropriate for a voluntary reporting item and hopes to encourage prompt reporting of information by allowing an Item 5 report to be filed at any time to disclose information not previously included in a document filed pursuant to the Exchange Act. A proposed addition to Instruction B would remind registrants that, in considering their Form 8–K current reporting of both specified events and other material events (Item 5), they should be aware of the accuracy, completeness and currency of Securities Act registration statements that incorporate Exchange Act reports by reference.

These proposed amendments to General Instruction B would enhance the utility of Form 8–K in the integrated disclosure system by providing registrants greater flexibility in disclosing material developments and by allowing information more than fifteen or thirty days old to be included in the Exchange Act reporting system. Under the integrated disclosure system, to the extent recent developments are included in a report on Form 8–K, reiteration in the Securities Act prospectus may be unnecessary for certain issuers.[10] In such cases, registrants would be permitted to use Form 8–K to bring information filed pursuant to the Exchange Act reporting system up to date, so that certain Securities Act registration statements then need not present all substantive information directly but may instead incorporate Exchange Act reports by reference.

The Commission also is proposing to amend the instructions to Form 8–K by adding a new Instruction F providing that registrants may incorporate by reference, rather than reiterate in the Form 8–K report, press releases or other documents which contain the required information.[11] This proposal is consistent with the Commission's other efforts to date to simplify corporate reporting by encouraging and facilitating the integration of formal Commission filings with informal corporate communications to shareholders. The revised Form 10–K allows registrants to incorporate part or all of their informal annual reports to security holders into the Form 10–K annual report rather than prepare two complete and largely duplicative documents. Similarly, registrants are allowed and encouraged to use their informal quarterly reports to shareholders to satisfy some or all of Form 10–Q's financial and other information requirements. The Commission believes granting registrants the option of incorporating press releases or other communications to shareholders or the market in reports on Form 8–K will serve the same purpose of simplifying corporate reporting and reducing burdens imposed by Exchange Act filing requirements.

b. *Specific Information to be Included in the Report.* A technical amendment is proposed to be made to Item 1 (Changes in Control of Registrant) of Form 8–K. The text of paragraph (b) of Item 1 would be replaced by a reference to Item 403(c) of Regulation S–K, which contains virtually the same provisions, thereby eliminating duplication.

Item 4 (Changes in Registrant's Certifying Accountants) is proposed to be amended by changing paragraph (d), dealing with the former accountant's letter, in two minor respects. First, the requirement to file a copy of such letter with each copy of the Form 8–K filed would be changed to require simply that copies of the letter be filed as an exhibit; the provisions of General Instruction E calling for three copies of the report to include exhibits then would be applicable. Second, the provision formerly set forth in General Instruction B concerning former accountant's letters unavailable at the time of filing the Form 8–K report is proposed to be moved to paragraph (d) of Item 4. Both changes are designed to simplify Form 8–K preparation.

Finally, the Commission is proposing to amend the instructions to Item 7 to add a new Instruction 4 providing that required financial statements for an acquired business may be filed up to 60 days after the report on Form 8–K is filed.[12] Currently, registrants must make written requests to the Commission for any extension of the time for filing financial statements beyond the date the report is to be filed. Proposed Instruction 4 also would allow registrants to include unaudited financial statements in Form 8–K reports as and optional interim measure. Written requests would have to be made for extensions of time to file financial information beyond 60 days. Proposed new Instruction 5 would contain the provisions now set forth as part of Instruction 4 relating to request to omit or substitute required financial information.

II. Proposed Technical Amendments

The Commission is proposing two types of technical amendments to Exchange Act rules, forms, and schedules to coordinate with other actions being proposed concurrently with this release as part of the integrated disclosure program. The first amendments reflect the Commission's proposed revision of Regulation S–K, which would organize by subject matter and renumber the uniform disclosure items contained in Regulation S–K. Consequently, this action necessitates the proposal of a number of technical amendments to Rules 14a–3 and 14c–3, Forms 10, 8–K, 10–K and 10–Q and Schedules 14A and 14B under the Exchange Act to conform the references to items of Regulation S–K contained therein to the items as proposed to be renumbered. For example, Item 2 of Regulation S–K (Description of Property) is proposed to be renumbered as Item 102. Accordingly, Item 2 of Form 10–K, which currently requires a registrant to provide the information required by Item 2 of Regulation S–K, is proposed to be amended to required the information required by Item 102 of Regulation S–K.[13]

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[10] Item 10 of proposed Form S–3 would require disclosure to be presented in the prospectus with respect to "any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year . . . and which have not been described in a report on Form 10–Q . . . or Form 8–K . . . filed under the Exchange Act."

[11] Any such document incorporated by reference would be required to be filed as an exhibit to the Form 8–K report.

[12] In 1976, the Commission proposed to permit registrants to file within 60 days after the Form 8–K report is filed the financial statements required to be included in reports is filed the financial statements required to be included in reports pursuant to Item 2. Securities Exchange Act Release No. 12619 (July 12, 1976) [41 FR 29784]. That proposal was not adopted, however, because the Commission determined that the then-existing provisions of Rule 12b–25 (17 CFR 240.12b–25) providing for a 30-day extension of time to file rendered the proposed Form 8–K provision unnecessary. Securities Exchange Act Release No. 13156 (January 13, 1977) [42 FR 4424]. Rule 12b–25, which was amended in 1980, no longer applies to reports on Form 8–K. Securities Act Release No. 6203 (April 2, 1980) [FR 23651].

[13] As discussed in the Regulation S–K Release, current Item 12 of Regulation S–K is proposed to be divided into two Regulation S–K items: proposed Item 302 requiring the supplementary financial information currently specified in paragraphs (a) and (c) of Item 12 and proposed Item 304 requiring the information concerning disagreements with accountants on accounting and financial disclosure currently specified in paragraph (b) of Item 12. Accordingly, the references to Item 12 in Rules 14a–3 and 14c–3, Schedule 14A and Forms 10 and 10–K are proposed to be coordinated with the proposed revision of Regulation S–K by requiring, in separate items or provisions, the information specified in proposed Items 302 and 304 of that regulation.

Second, the Commission is proposing to amend Rules 13e–4 and 14d–6 under the Exchange Act, regarding tender offer disclosure requirements, in a technical manner that does not alter the disclosure required under those rules. Rules 13e–4 and 14d–6 currently refer to Guide 59 for the Preparation and Filing of Registration Statements in order to provide guidance as to what is sufficient to constitute a fair and adequate summary of official information for purposes of the disclosure requirements contained therein. Since Guide 59 is proposed to be in connection with the proposed revision of Regulation S–K, the Commission is proposing to delete the references to Guide 59 contained in Rules 13e–4 and 14d–6 and to insert in lieu thereof the substantive summary financial information requirement currently contained in paragraph (e) of Guide 59.[14]

The Commission intends to revisit the disclosure requirements of Rules 13e–3, 13e–4 and 14d–6, however, as well as those of Schedules 13E–3 (17 CFR 240.13e–100) and 13E–4 (17 CFR 240;13e–101), in connection with a planned re-examination of its regulations pertaining generally to disclosures in the context of negotiated business combinations including mergers and tender offers. At such time, the Commission also may address other disclosure issues in the tender offer rules and related schedules raised by the integrated disclosure program.

Attention is directed to the proposed text of the rules, forms and schedules for the substance of the technical amendments discussed above.

III. Proposed Amendments to Schedule 14A

Item 15 of Schedule 14A currently requires that if proxies are solicited for an action to be taken with respect to Item 12 (Authorization or issuance of securities otherwise than for exchange), Item 13 (Modification or exchange of securities), or Item 14 (Mergers, consolidations, acquistions and similar matters), the proxy statement must contain financial required by Regulation S–X and the supplementary financial information requested by Item 12 (proposed to be renumbered Item 301) of Regulation S–K.[15] Item 14 currently requires a proxy statement with respect to mergers, consolidations, acquistions and similar matters also to contain management's discussion and analysis required by Item 11 (proposed to be renumbered Item 303) of Regulation S–K.

Although management's discussion and analysis is not required to be presented along with financial statements included in Item 12 or 13 solicitations, the current practice among issuers is to include management's discussion and analysis whenever financial statements are furnished. The Commission is proposing to conform the requirements of Schedule 14A to the current practice in this area. The Commission believes that where financial statements are required, whether as a result of Item 12, 13, or 14, management's discussion and analysis also should be required, as essential to clear understanding of the financial statements.

Accordingly, the Commission is proposing to amend Item 15 to require that a proxy statement with respect to Item 12, 13 or 14 provide, whenever financial statements are required, management's discussion and analysis as required by proposed Item 303 of Regulation S–K. At the same time, the Commission is proposing to delete, as duplicative of the proposed Item 15 requirement, the requirement in Item 14 to provide management's discussion and analysis.[16]

The Commission also is proposing to delete Appendix A to Schedule 14A. Appendix A currently contains two tables which illustrate the presentation in tabular form of certain information relating to stock options and stock appreciation rights that may be required by Schedule 14A. As explained in the Regulation S–K Release, the tables are proposed to be included in proposed uniform disclosure Item 402 (current Item 4) of Regulation S–K (Management Remuneration and Transactions). Since Item 7 of Schedule 14A (Remuneration of Directors and Executive Officers) requires the information specified by this uniform disclosure item, a proxy statement meeting the requirements of Schedule 14A would incorporate the tables, if applicable. Accordingly, the Commission is proposing to eliminate Appendix A as duplicative of proposed Regulation S–K Item 402.

Finally, the Commission is reproposing at this time several previously proposed amendments to Schedule 14A that are designed to clarify certain disclosure requirements, improve disclosure, and reduce compliance burdens on registrants.[17] These amendments are being reproposed without change so that commentators may consider them in the context of the proposed amendments to the integrated disclosure program. Comments already received on these amendments will be considered; therefore, it is unnecessary for commentrators to repeat or resubmit comments.

IV. Proposed Amendments to Registration Statements Pursuant to Section 12 (b) or (g) of the Exchange Act

As part of its integration program, the Commission has reviewed Exchange Act rules, forms and schedules to determine what amendments, in addition to the technical amendments discussed above, should be proposed to simplify disclosure requirements and to facilitate integrated disclosure. In particular, the Commission has reviewed the rules, forms and schedules with a view towards making disclosure requirements uniform, to the extent practicable, by substituting references to the uniform disclosure items of Regulation S–K for existing disclosure items and by eliminating unnecessary or overly burdensome disclosure items. In light of its review, the Commission is proposing a number of amendments, similar to those it has adopted or proposed in the past for proxy statements, annual and quarterly reports, and proposed Securities Act registration Forms S–1, S–2, and S–3 (published for comment concurrently with this release), to certain registration statements for securities filed pursuant to Section 12 (b) or (g) of the Exchange Act, Forms 10, 8–A and 8–B.

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[14] The Commission recently proposed amending Rule 13e–3 (17 CFR 240.13e–3) under the Exchange Act, regarding disclosure in going private transactions, to replace the Instruction 2 reference to Guide 59 with a reference to the proposed "Summary Information" item of Regulation S–K. Securities Act Release No. 6309 (Aril 13, 1981) [46 FR 22602]. The Commission will, however, amend Rule 13e–3 in a manner similar to Rules 13e–4 and 14d–6 when it considers the outstanding proposed amendments to that rule.

[15] The Commission is aware of the complexity of existing proxy statement financial statement requirements and is reexamining these requirements as part of this separate business combination rulemaking project.

[16] The Commission proposed on December 24, 1980, and adopted on August 5, 1981, certain amendments to Item 15 of Schedule 14A designed to clarify (1) when financial statements may be incorporated by reference into proxy or information statements from annual reports to security holders and (2) under what circumstances financial statements may be omitted from proxy or information statement. *See* Securities Act Release No. 6286 (December 24, 1980) [46 FR 1289] and Securities Act Release No. 6330 (August 5, 1981). While these amendments are not reflected in the text of the proposals in this release, they will be reflected in the final action taken.

[17] These proposed amendments to paragraphs (b) and (d) of Item 6, Instruction 3(c) to Item 9 and Item 22 relate to business and other relationships between a director and an issuer and to the vote required for the election of directors. For a complete discussion of these proposed amendments, *see* Securities Exchange Act Release No. 17517 (February 5, 1981) [46 FR 11954], which also indicates proposed changes from existing language.

Form 10. The proposed amendments to Form 10, the general form for the registration of securities pursuant to Section 12 of the Exchange Act, are intended to bring about uniformity, to the extent practicable, in the disclosure items of Form 10 and those contained in proxy statements and periodic reports under the Exchange Act and in registration statements under the Securities Act. The Commission believes that there is no basis for maintaining immaterial differences in disclosure requirements related to the same matter in Form 10 and in such other filings, particularly in periodic reports, which, in substance, update the matters disclosed in Form 10.[18]

First, the Commission is proposing to delete certain disclosure items that set forth substantive disclosure requirements[19] and to replace those items with new items referring to the uniform disclosure items of Regulation S–K that require substantially the same information. In addition, the Commission is proposing to renumber the items in Form 10, as necessitated by these and other proposed amendments.

The items in Form 10 which are proposed to be replaced by uniform disclosure items of Regulation S–K in the manner described above are: Item 7 (Management Remuneration and Transactions), to be replaced (with the heading remaining the same) with a new Item 6 requiring the information specified in proposed Item 402 of Regulation S–K (also entitled Management Remuneration and Transactions); Item 11 (Recent Sales of Unregistered Securities), to be replaced (with the heading remaining the same) by a new Item 9 requiring the information specified in proposed Item 701 of Regulation S–K (also entitled Recent Sales of Unregistered Securities); Item 12 (Capital Stock to be Registered), Item 13 (Debt Securities to be Registered) and Item 14 (Other Securities to be Registered), to be replaced by a new Item 10 (Description of Registrant's Securities to be Registered) requiring the information specified in proposed Item 202 of Regulation S–K (Description of Registrant's Securities); and Item 15 (Indemnification of Directors and Officers), to be replaced (with the heading remaining the same) by a new Item 11 requiring the information specified in proposed Item 510(a) of Regulation S–K (also entitled Indemnification of Directors and Officers).

Second, the Commission is proposing to delete Item 4 of Form 10, (Parents and Subsidiaries). At the same time, however, the Commission is proposing to extend to Form 10 the requirement in the exhibit item of Regulation S–K to attach a list of significant subsidiaries as to the filing.[20] The proposed amendments are intended to correspond to the recent amendments to Form 10–K which eliminated its parents and subsidiaries item and required in lieu thereof a list of subsidiaries as an exhibit. The Commission believes that the proposed amendments will lessen disclosure burdens without reducing the quality of disclosure in Form 10 because information regarding parents would, in almost all instances, be disclosed pursuant to Item 5 of Form 10 (Security Ownership of Certain Beneficial Owners and Management).

Third, the Commission is proposing to add a new Item 8 to Form 10 (Market Price of and Dividends on the Registrant's Stock and Related Stockholder Matters). The new item, through its reference to proposed Regulation S–K Item 201 (current Item 9), will require disclosure of information concerning, among other things, the trading market in the registrant's common stock, the dividends declared within the past two years and the number of holders of common stock of the registrant.

Certain of the information required by proposed Item 8, such as information concerning dividends, currently is not required to be disclosed on Form 10. The Commission believes, however, that this information is part of the basic package of information that is necessary for meaningful investment decisions in the context of both public offerings and secondary market transactions. Furthermore, the Commission believes that Form 10 should conform, to the extent practicable, to annual reports filed on Form 10–K and annual reports to shareholders pursuant to Rule 14a–3 or 14c–3 of the Exchange Act, both of which require disclosure of the information required by proposed Item 8.

In connection with the amendment, the Commission is proposing to delete existing Items 9 and 10 of Form 10 as being unnecessary and duplicative in light of proposed Item 8. Item 9 now calls for information regarding the number of equity security holders. As mentioned above, proposed Item 8 would require disclosure of the number of common stockholders. The Commission does not believe that additional disclosure in Form 10 regarding the number of equity security holders other than common stockholders is necessary. Accordingly, it is proposing to delete existing Item 9.

Item 10 of Form 10 currently requires information concerning the nature of the trading market for the registrant's securities. Proposed Item 8 of Form 10 would require certain of the same market information relative to a registrant's common stock. The Commission believes that the benefit, if any, to investors and shareholders of the more detailed market information now required by Item 10 (*e.g.*, the reported high and low bid prices for each quarterly period during the past three years[21] and the names of the principal market makers) is outweighed by the burden placed on registrants to prepare a disclosure item which is usable in Form 10 only. Moreover, this information generally is available from other sources. Accordingly, the Commission is proposing to delete Item 10. It should be noted, however, that, if a registrant is registering a class of securities other than common stock pursuant to Section 12(g) of the Exchange Act, it would be required pursuant to proposed Item 10 (which refers to proposed Item 202 of Regulation S–K) to disclose certain market information with respect to the class of securities being registered.[22]

Forms 8–A and 8–B. The Commission also is proposing amendments to Forms 8–A and 8–B[23] that are intended to

[18] *See* Securities Exchange Act Release No. 8403 (September 11, 1968).

[19] As discussed above, items in Form 10 that currently contain references to Regulation S–K items are proposed to be amended to conform the references to the proposed revision of Regulation S–K.

[20] Exhibit (22) in Item 7 (proposed to be renumbered Item 601) of Regulation S–K.

[21] Item 9 (proposed Item 202) of Regulation S–K requires such information only for the past two years.

[22] In connection with the above-described amendments, it should be noted that Item 2 of Form 10 (Summary of Operations) now requires disclosure of information concerning the ratio of earnings to fixed charges that is not required by any corresponding uniform disclosure item of Regulation S–K. In February, the Commission published proposals to include standard requirements regarding ratio presentation in the "Selected Financial Data" item of Regulation S–K. Securities Act Release No.6285 (February 6, 1981) [45 FR 12756]. Under the proposals, the requirements to disclose the ratio of earnings to fixed charges would apply only to registration statements under the Securities Act or debt or preferred equity securities. Accordingly, the Commission is proposing to delete from Item 2 of Form 10 the requirement as to the ratio of earnings. The Commission also is proposing to amend the heading of that item to clarify its scope.

[23] Form 8–A is used for the registration of additional classes of securities pursuant to Section 12 of the Exhange Act by issuers that are subject to the reporting requirements of Section 13 or 15(d); Form 8–B is used for the registration of securities pursuant to Section 12 by issuers that have succeeded to an issuer with securities registered pursuant to Section 12.

simplify these forms and coordinate them with Regulation S–K. First, the Commission is proposing amendments to the forms, similar to those proposed to Form 10, to delete certain substantive disclosure items and replace them with items requiring the information specified in the uniform disclosure items from Regulation S–K and to make renumbering changes necessitated by such amendments. In Form 8–A, Item 1 (Capital Stock to be Registered), Item 2 (Debt Securities to be Registered) and Item 3 (Other Securities to be Registered) are proposed to be replaced by a new Item 1 (Description of Registrant's Securities to be Registered) requiring the information specified in proposed Item 202 of Regulation S–K (Description of Registrant's Securities). This change also is proposed to be made in the items of Form 8–B relating to securities to be registered, Items 4, 5 and 6, except that these items are proposed to be replaced by a new Item 4.

Second, the Commission is proposing to retain, with slight modifications, the instructions to certain disclosure items that, among other things, make clear that a registrant may respond to the item by incorporating by reference a response from another filing. Third, the Commission is proposing a technical amendment to the Instruction as to Exhibits in Form 8–B to coordinate that instruction with the proposed renumbering to the items in Form 8–B

V. Proposed Amendments to Form 10–K

The Commission is proposing amendments to Form 10–K, the annual report form under the Exchange Act, that are intended to make the disclosure requirements relating to a registrant's fourth fiscal quarter consistent with those relating to its first, second and third fiscal quarters and to elicit fourth quarter information that should be contained in the Exchange Act disclosure system. First, the Commission is proposing to amend Item 3 of Form 10–K, which requires a registrant to provide the information concerning legal proceedings requested by Item 5 (proposed to be renumbered Item 103) of Regulation S–K, to provide similar information concerning any legal proceeding that was terminated during the fourth fiscal quarter, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries. The requirement would parallel the requirement in Item 1 of Part II of Form 10–Q, for quarterly reports under the Exchange Act, to provide information regarding terminated legal proceedings for the registrant's first, second, or third fiscal quarter. Second, the Commission is proposing to amend Form 10–K by adding a new Item 4 [24] requiring a registrant to furnish information concerning matters submitted to a vote of security holders during the fourth fiscal quarter. This requirement would parallel the requirement in Item 4 of Part II of Form 10–Q to provide such information for its first, second or third fiscal quarter.[25]

The Commission believes that the periodic reporting system, through annual, quarterly and current reports on Forms 10–K, 10–Q and 8–K, respectively, should provide meaningful disclosure to investors and shareholders on a continuous basis.[26] Use of Form 10–K to close the gap that currently exists in the disclosure of certain fourth quarter information will help to ensure that a registrant's quarterly and annual reports for a fiscal year establish the foundation upon which subsequent quarterly and current reports can be built. At the same time, use of Form 10–K will help to ensure that the additional fourth quarter information is disclosed on a timely basis and that the process of obtaining information about a registrant through its periodic reports is not unduly complicated.[27]

The Commission also is proposing to renumber current Item 4 (Security Ownership of Certain Beneficial Owners and Management) as Item 12 and to include this item in Part III of the form. In conjunction with this, the Commission is proposing to amend certain instructions to Form 10–K [28] to make clear that the information required by proposed Item 12 may, as in the case of other information required by Part III of the form, be incorporated by reference from a registrant's definitive proxy or information statement. The Commission, as part of its recent revision of Form 10–K, placed Item 4 in Part I in order to eliminate the necessity of amending Form 10–K again if certain revisions under consideration in proxy statement ownership reporting requirements were adopted. Although the Commission is still considering revising these ownership reporting requirements, it believes that it should make clear that it permits incorporation by reference of the information required by proposed Item 12. Accordingly, it is proposed to place the item in Part III.

A minor change is being proposed to the Form 10–K cover page requirement to disclose the aggregate market value of the voting stock held by non-affiliates of the registrant. this requirement was adopted to assist the Commission in obtaining data needed to evaluate the eligibility requirements of the various Securities Act registration forms. The Commission is proposing to add a note to this cover page requirement to make clear the staff's position that, if the determination of affiliate status cannot be made without incurring inordinate time and expense, the registrant may calculate the aggregate market value of common stock held by non-affiliates on the basis of reasonable assumptions, as long as the assumptions are set forth in the Form 10–K report.

Finally, the Commission is proposing to amend General Instruction D (Signature and Filing of Report) to clarify the form's signature requirement. The proposed instruction would make explicit the staff's position that if the registrant is a limited partnership, the report on Form 10–K must be signed by a majority of the board directors of any corporate general partner who signs the registration statement. In addition, specific reference would be made to Exchange Act Rule 12b–11 governing signatures in multiple capacities and pursuant to powers of attorney.

VI. Integrated Reports to Security Holders

The Commission is proposing to amend the general instructions to Forms 10–K and 10–Q and to amend Rule 14a–3 to add the provisions currently contained in Guide 4 of the Guides for the Preparation and Filing of Exchange Act Reports which sets forth the conditions under which informal annual or quarterly reports to shareholders to be combined with the required Form 10–K or Form 10–Q information. Because of its procedural nature, the Guides Release proposed to delete Guide 4 and

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[24] Current Item 4 is proposed to be renumbered as Item 12, with current Item 11 being renumbered as Item 13.

[25] Form 10–Q also requires the disclosure of information concerning changes in securities and defaults upon senior securities which is not expressly required to be disclosed on Form 10–K. Since information concerning these matters relative to a registrant's fourth fiscal quarter would be included, if material, in the text of or notes to the financial statements in the registrant's filing on Form 10–K, the Commission is not proposing to amend Form 10–K to expressly require the disclosure of such fourth quarter information.

[26] *See* Securities Act Release No. 6288 (February 9, 1981) [46 FR 12480].

[27] In this regard, the Commission considered whether it would be more appropriate to require the additional fourth quarter information to be included on a registrant's filing on Form 10–Q for the first quarter of the following fiscal year. The Commission has determined, however, that a registrant's filing on Form 10–Q for its first fiscal quarter is a less appropriate means of eliciting information relative to the registrant's previous fourth quarter in terms of timeliness of disclosure, burdens on investors and shareholders in locating information relating to a particular fiscal year, and establishment of a foundation upon which subsequent reports can be built.

[28] Instructions G (3) and (4).

recast it without substantive change as new Rule 0–10 of the Rules of General Application under the Exchange Act. The Commission now believes it would be more appropriate to add the Guide 4 provisions to the forms in which combination is allowed, particularly since those forms (Forms 10–K and 10–Q) already contain instructions allowing information requirements to be satisfied through incorporation by reference from informal reports to security holders. Thus, the proposed change would highlight the document preparation flexibility built into the integrated disclosure system by putting in one place the instructions indicating that, for annual and quarterly Commission filings, registrants may prepare (1) one document; (2) two documents with one incorporated into the other to replace reiteration of some or all information; or (3) two entirely separate documents.

The Guide 4 (proposed Rule 0–10) provisions would be added to Form 10–K as new General Instruction H and to Form 10–Q as new General Instruction E.[29] The Form 10–Q provision also would indicate that combination with either Part I or the entire form is allowed. The paragraph dealing with satisfaction of the Rule 14a–3 reporting obligation is proposed to be added to Rule 14a–3 and is not proposed to be contained in the Form 10–K or Form 10–Q instruction. Those paragraphs providing that (1) additional information must meet the requirements of Rules 12b–20 (17 CFR 240.12b–20) and 12b–30 (17 CFR 240.12b–30) and (2) the integrated reports should contain a disclaimer of Commission approval are proposed to be deleted as unnecessary and potentially confusing. Finally, an amendment is proposed to the Form 10–Q instruction concerning the filed status of information to make clear that Part I of an integrated report is not deemed filed for purposes of Section 18 of the Exchange Act.

VII. Proposed Amendment to Rule 15c2–8

As part of the proposed overall revision of Regulation S–K and the Guides for the Preparation and Filing of Registration Statements and Reports, the Commission proposed to amend Exchange Act Rule 15c2–8, which sets forth the specific steps participating brokers or dealers must follow to reasonably distribute the preliminary prospectus, to incorporate the "48-hour rule" of Securities Act Release No. 4968.[30] Proposed new paragraph (b) required that a participating broker or dealer, "in connection with a new or speculative issue of securities, . . . distribute a copy of the preliminary prospectus to each person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation." The proposed amendment was intended to consolidate the distribution requirements of Securities Act Release No. 4968 with those contained in Rule 15c2–8. At the same time, the Commission specifically requested comment as to whether the "48-hour rule" should be extended to all issues, regardless of whether they are new or speculative.

The commentators who addressed the proposed amendment to Rule 15c2–8 objected to any extension of the "48-hour rule" beyond new of speculative issues. They believed that such an extension would create an artificial waiting period between the filing and effectiveness of a registration statement and impose an undue burden on an issuer's ability to tap favorable securities markets. In addition, it was suggested that "new or speculative" issues be defined in order to provide brokers and dealers with more guidance as to the application of the rule.

In view of the comments received, the Commission has determined to modify the proposed amendment to Rule 15c2–8 and is reproposing that amendment for additional comment. The Commission agrees with commentators that the burden placed on issuers by an extension of the "48-hour rule" beyond new and speculative issues outweighs the public interest in such an extension. Accordingly, the Commission is not proposing to modify proposed paragraph (b) to extend its application. The Commission is, however, proposing to modify proposed paragraph (b) to provide more guidance as to the application of the "48-hour rule" by deleting the "New or speculative" phraseology and replacing it with two conditions which the Commission believes are indicia of the offerings that appropriately should be covered by Rule 15c2–8. Paragraph (b), as reproposed, would require a participating broker or dealer to comply with the "48-hour rule" for any issue of securities, the issuer of which had not previously been required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act or is required to include in the prospectus reference to material risks pursuant to proposed Item 501(d) of Regulation S–K.[31]

VIII. Rescission of Certain Obsolescent Forms

In connection with its review of the rules, forms and schedules under the Exchange Act, the Commission is proposing to rescind six rarely used Exchange Act forms, three registration forms and three annual report forms. Filings on the affected forms are made so rarely that the Commission questions the need to retain such forms and believes that the forms can be eliminated without detriment to any registrant. The registration forms which are proposed for rescission are: Form 12 (for Issuers Filings Reports With Other Federal Agencies); Form 14 (for Certificates of Deposit Issued by a Committee); and Form 16 (for Voting Trust Certificates). The annual report forms proposed for rescission are: Form 14–K and Form 4–MD (both Annual Reports for Certificates of Deposit Issued by a Committee) and Form 16–K (Annual Report for Voting Trust Certificates).

IX Proposed Amendments to the Safe Harbor Rule for Projections

In the process of coordinating the rules and forms under the Exchange Act with Regulation S–K, discrepancies in the availability of safe harbor protection for projections under Securities Act Rule 175 (and the related safe harbor rules under the other securities acts) [32] to certain Exchange Act filings have come to the Commission's attention. Securities Act Rule 175 (and the related safe harbor rules) limits protection for issuers subject to the reporting requirements of the Exchange Act to those who have filed their most recent annual report on Form 10–K and for issuers not subject to the reporting requirements of the Exchange Act to registration statements filed under the Securities Act. Accordingly, the rule currently does not provide safe harbor protection to such filings by a reporting issuer as its quarterly reports on Form 10–Q and its annual report on Form 10–K until such time as it has already filed an annual report on Form 10–K. This lack of protection applies even to filings on Forms 10–K and 10–Q by a reporting

[29] Existing General Instruction H (Form 10–K) and E (Form 10–Q) and the ensuing General Instructions in both forms would be redesignated accordingly.

[30] Securities Act Release No. 4968 (April 24, 1969) [34 FR 7235].

[31] The Commission also is proposing, as part of its proposed amendments to Regulation C discussed in the Regulation C Release, to include these indicia in proposed Rule 419 in connection with that rule's incorporation of Guide 16 for the Preparation and Filing of Registration Statements, which provides for supplementary disclosure in the case of a new or speculative issue of securities.

[32] Exchange Act Rule 32b–6, Holding Company Act Rule 103A, and Trust Indenture Act Rule 0–11.

issuer under Section 15(d) of the Exchange Act, whose registration statement filed previously under the Securities Act would be subject to the safe harbor rule. In addition, the rule does not provide protection to registration statements on Form 10 filed by a non-reporting issuer pursuant to Section 12 (b) or (g) of the Exchange Act.

The Commission is proposing amendments to Rule 175 (and the related safe harbor rules) to address these anomalies. The Commission does not believe that forward-looking statements made by a non-reporting issuer in a registration statement filed pursuant to Section 12 (b) or (g) of the Exchange Act or by a reporting issuer that was not subject to an annual report filing requirement at the end of the prior fiscal year are less likely to have a reasonable basis or to be able to be evaluated by investors and shareholders than statements that currently qualify for safe harbor protection.

The Commission continues to believe, however, that an issuer whose ability to prepare and disclose forward-looking statements with a reasonable basis may be significantly impaired due to a serious deficiency in its Exchange Act filings should not be able to avail itself of harbor protection for its filings.[33] Accordingly, the Commission is proposing to retain the requirement that a reporting issuer who was required to have filed an annual report on Form 10–K for its most recent fiscal year have complied with that requirement.

The Commission also is proposing technical amendments to Rule 175 (and the related safe harbor rules) conforming the references to Regulation S–K contained therein to the proposed revision of Regulation S–K.

X. Request for Comment

Commentators are specifically invited to make suggestions as to additional respects in which Exchange Act rules, forms and schedules could better coordinate with the integrated disclosure system. In this regard, attention is directed to such matters as whether additional use could be made of the uniform disclosure items in Regulation S–K and whether the Exchange Act rules, forms and schedules would, if amended in the manner proposed in this release, contain provision so references inconsistent with the integrated disclosure system.

The Commission also solicits comments as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competiton. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

[33] *See* Securities Act Release 6084 (July 2, 1979) [44 FR 38810].

Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising paragraphs (b) (1)(i) and (2) and (c)(3) 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; 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.

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.300), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.300), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934.

(c) * * *

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S–K (17 CFR 229.300); or

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By revising paragraphs (b) (1)(i) and (2) and (c)(3) 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 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.

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.300), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.300), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, or in an annual report to shareholders meeting the requirements of Rule 14a–3 (b) and (c) or Rule 14c–3 (a) and (b) under the Securities Exchange Act of 1934.

(c) * * *

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S–K (17 CFR 229.300); or

* * * * *

3. By revising Instruction B(1) to paragraph (d) of § 240.13e–4 to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(d) * * *

Instruction:

* * * * *

B. * * *

(1) The following summary financial information for (i) the two most recent fiscal years, and (ii) the latest year-to-date interim

period and corresponding interim period of the preceding year:

Income Statement:

Net sales and operating revenues and other revenues
Income before extraordinary items
Net income

Balance Sheet (at end of period):

Working capital
Total assets
Total assets less deferred research and development charges and excess of cost of assets acquried over book value
Total indebtedness
Shareholders' equity

Per Share[1]

Income per common share before extraordinary items
Extraordinary items
Net income per common share (and common share equivalents, if applicable)
Net income per share on a fully diluted basis

* * * * *

4. By renumbering paragraph (b)(4)–(12) as paragraphs (b)(5)–(13); adding a new paragraph (b)(4) and a new paragraph (e); and revising paragraph (b)(3) and renumbered paragraphs (b)(5), (7) and (9) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(3) The report shall contain the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300).

(4) The report shall contain information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.300).

(5)(i) The report shall contain the selected financial data required by Item 301 of Regulation S–K (17 CFR 229.300).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (17 CFR 220.300).

* * * * *

(7) The report shall contain information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (17 CFR 229.100).

* * * * *

(9) The report shall contain the market price of and dividends on the issuer's common stock and related security holder matters required by Item 201 of Regulation S–K (17 CFR 229.200).

* * * * *

(e) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10–K (§ 249.310) may also be submitted in satisfaction of this rule. When filed as the annual report on Form 10–K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c).

* * * * *

5. By removing Item 14(b)(9); and revising Items 5(d), (e) and (g); 6(a), (b)(3), (4) and (5) and (d)(2); 7; 9(c) and (d) and Instructions 1 and 3(c) thereunder; 10(c) and (d) and Instruction 1 thereunder; 11(b) and (c) and Instruction 1 thereunder; 14(b)(8); 15 and 22 of § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. *Voting securities and principal holders thereof.*

* * * * *

(d) Furnish the information required by Item 403(a) of Regulation S–K (17 CFR 229.400) to the extent known by the persons on whose behalf the solicitation is made.

(e) Furnish the information required by Item 403(b) of Regulation S–K (17 CFR 229.400).

* * * * *

(g) Furnish the information required by Item 403(c) of Regulation S–K (17 CFR 229.400).

Item 6. *Directors and executive officers.*

* * * * *

(a) The information required by Item 401 of Regulation S–K (17 CFR 229.400);

(b) With respect to issuers other than investment companies registered under the Investment Company Act of 1940, describe, in reasonable proximity to the information required by paragraph (a), any of the following relationships which exist:

* * * * *

(3) If the nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal years owned, directly or indirectly, in excess of 5 percent equity interest in any firm, corporation or other business or professional entity:

(i) Which has made payments to the issuer or its subsidiaries for property or services during the issuer's last full fiscal year in excess of 1 percent of the issuer's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the issuer or its subsidiaries for property or services during the current fiscal year in excess of 1 percent of the issuer's consolidated gross revenues for its last full fiscal year;

(iii) To which the issuer or its subsidiaries was indebted at the issuer's last fiscal year end in an aggregate amount in excess of 1 percent of the issuer's total consolidated assets at the end of such fiscal year, or $5,000,000, whichever is less;

(iv) to which the issuer or its subsidiaries has made payments for property or services during such entity's last fiscal year in excess of 1 percent of such entity's consolidated gross revenues for its last full fiscal year;

(v) To which the issuer or its subsidiaries proposes to make payments for property or services during such entity's current fiscal year in excess of 1 percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed 1 percent of the consolidated gross revenues of any entity other than the issuer for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the issuer and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(C) Payments made to or received from a 5 percent subsidiary (that term being defined as if the asset, sales and revenue, and income thresholds specified in Rule 1–02(v) (17 CFR 210.1–02(v)) of Regulation S–X referred to 5 percent instead of 10 percent), provided that all such 5 percent subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1–02(v) of Regulation S–X;

(viii) In calculating indebtedness for purposes of paragraph (b)(3)(iii) above, the following may be excluded:

(A) Debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

(B) Amounts due for purchases subject to the usual trade terms;

(C) Indebtedness incurred by a 5 percent subsidiary (as defined in paragraph (vii)(C)), provided that all such 5 percent subsidiaries which have incurred indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1–02(v) of Regulation S–X;

(ix) When the only otherwise disclosable relationship under this paragraph between the issuer and a corporation or business entity arises from the presence of a common nonemployee director, such relationship need not be disclosed unless:

(A) For purposes of (i)–(ii) and (iv)–(v) the payments for property and services exceed 5

[1] Average number of shares of common stock outstanding during each period was . . . . . (as adjusted to given effect to stock dividends or stock splits)

percent of the issuer's or such entity's consolidated gross revenues, respectively;

(B) For purposes of (iii) indebtedness exceeds 5 percent of the issuer's total consolidated assets;

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year, *Provided, however,* That the dollar amount of fees paid to a law firm by the issuer need not be disclosed if such amount does not exceed $50,000;

(5) That the nominee or director is a director, partner, officer or employee of any investment banking firm which has performed services for the issuer other than as a participating underwriter in a syndicate in the last two full fiscal years or which the issuer proposes to have performed services in the current year, *Provided, however,* That the dollar amount fees paid to an investment banking firm by the issuer need not be disclosed if such amount does not exceed $50,000; or

* * * * *

(d) * * *

(2) State whether the issuer's nominating or similar committee, or, in the absence of such a committee, the issuer's full board of directors, will consider nominees recommended by shareholders and, if so, describe the procedures to be followed by shareholders in submitting such recommendations.

* * * * *

Item 7. *Remuneration of directors and executive officers.* (See Note C at the beginning of Schedule 14A). Furnish the information required by Item 402 (17 CFR 229.400) and Instruction 4 to Item 103 of Regulation S–K (17 CFR 229.100) if action is to be taken with regard to (a) the election of directors, (b) any bonus, profit sharing or other remuneration plan, contract, or arrangement in which any director, nominee for election as a director, or officer of the issuer will participate, (c) any pension or retirement plan in which any such person will participate or (d) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees.

* * * * *

Item 9. *Bonus, profit sharing and other remuneration plans.*

* * * * *

(c) State the name and position with the issuer of each person specified in Item 402(a) of Regulation S–K (17 CFR 229.400) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S–K (17 CFR 229.400), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (1) each director or officer named in answer to Item 402(a) of Regulation S–K (17 CFR 229.400) who may participate in the plan to be acted upon; (2) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (3) all employees, if employees may participate in the plan.

* * * * *

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 6 to Item 402(a) of Regulation S–K (17 CFR 229.400).

* * * * *

3. * * *

(c) If action is to be taken with respect to any plan in which directors or officers may participate, furnish the information required by Item 402(d) (i) and (ii) and (iv) (A), (B) and (C) of Regulation S–K (17 CFR 229.400) for the period from the beginning of the registrant's fifth previous full fiscal year through the most recent practicable date, rather than for the registrant's last fiscal year; and the information required by Item 402(d) (iii) and (iv) (D) and (E) shall be furnished as of the most recent practicable date. If any person named or included in the group of officers and directors in answer to Item 402(a) of Regulation S–K (17 CFR 229.400) purchased or received securities of any class during that period through the exercise of options or stock appreciation rights (or other rights in tandem therewith), state the aggregate amount of securities of that class sold during the period by any such named person and by such group. If other employees may participate in the plan being acted upon, state with respect to such other employees: (1) the title and aggregate amount of securities subject to options, with or without tandem stock appreciation rights, granted from the beginning of the registrant's fifth previous full fiscal year through the most recent practicable date; (2) the weighted average option price per share for such options; (3) the number of shares with respect to which stock appreciation rights were granted, not in tandem with options, during that period; and (4) the weighted average base share price for such rights. (Other tandem rights granted to an employee shall be disclosed in connection with the related prices of appreciation rights). The information called for by this instruction may be furnished in the form of the table illustrated in Item 402 of Regulation S–K (17 CFR 229.400). See generally the instructions to Item 402(d) of Regulation S–K (17 CFR 229.400).

* * * * *

Item 10. *Pension and retirement plans.*

* * * * *

(c) State (1) the name and position with the issuer of each person specified in Item 402(a) of Regulation S–K (17 CFR 229.400) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefit estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S–K (17 CFR 229.400), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (1) each director or officer named in answer to Item 402(a) of Regulation S–K (17 CFR 229.400) who may participate in the plan to be acted upon; (2) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (3) all employees, if employees may participate in the plan.

* * * * *

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 6 to Item 402(a) of Regulation S–K (17 CFR 229.400). Instruction 2 to Item 9 shall apply to this item.

* * * * *

Item 11. *Options, warrants or rights.*

* * * * *

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (1) each director or officer named in answer to Item 402(a) of Regulation S–K (17 CFR 229.400); (2) each nominee for election as a director of the issuer; (3) each associate of such directors, officers or nominees; and (4) each other person who received or is to receive 5 percent of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and Item 402 of Regulation S–K (17 CFR 229.400), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (1) each director or officer named in answer to Item 402(a) of Regulation S–K 229.400) who may participate in the plan to be acted upon; (2) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (3) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 6 to Item 402(a) of Regulation S–K (17 CFR 229.400).

* * * * *

Item 14. *Mergers, consolidations, acquisitions and similar matters.*

* * * * *

(b) * * *

(8) Furnish the information relating to the issuer's industry segments, classes of similar

products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (17 CFR 229.100).

Instructions.

* * * * *

Item 15. *Financial information.*

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulation S–X. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in any exchange, merger, consolidation, acquisition or similar transaction. If financial statements required by Regulation S–X are furnished, also furnish the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300), information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.300) and management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (17 CFR 229.300).

* * * * *

Item 22. *Vote required for approval.*

As to each matter which is to be submitted to a vote of security holders, other than the selection or approval of auditors, state the vote required for its approval.

6. By revising Item 4(b) of § 240.14a–102 to read as follows:

§ 240.14a–102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a–11(c) (Rule 14a–11(c)).

* * * * *

Item 4. *Further matters.*

* * * * *

(b) Furnish for yourself and your associates the information required by Item 402(f) of Regulation S–K (17 CFR 229.400).

§ 240.14a–103 [Removed]

8. By renumbering paragraphs (a)(4)–(11) as paragraphs (a)(5)–(12); adding a new paragraph (a)(4); and revising paragraph (a)(3) and renumbered paragraphs (a)(5), (7) and (9) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(3) The report shall contain the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300).

(4) The report shall contain the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.300).

(5)(i) The report contain selected financial data required by Item 301 of Regulation S–K (17 CFR 229.300).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (17 CFR 229.300).

* * * * *

(7) The report shall contain the information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (17 CFR 229.100).

* * * * *

(9) The report shall contain the market price of and dividends on the issuer's common stock and related security holder matters required by Item 201 of Regulation S–K (17 CFR 229.200).

* * * * *

9. By revising paragraph (e)(1)(viii) of § 240.14d–6 to read as follows:

§ 240.14d–6 Disclosure requirements with respect to tender offers.

* * * * *

(e) * * *

(1) * * *

(viii) The disclosure required by Item 9 of Schedule 14D–1 or a fair and adequate summary thereof. (Under normal circumstances, the following summary financial information for the period covered by the financial information furnished in response to Item 9 will be a sufficient summary. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained).

Income Statement:

- Net sales and operating revenues and other revenues
- Income before extraordinary items
- Net income

Balance sheet (at end of period):

- Working capital
- Total assets
- Total assets less deferred research and development charges and excess of cost of assets acquired over book value
- Total indebtedness
- Shareholders' equity

Per Share[2]

- Income per common share before extraordinary items
- Extraordinary items
- Net income per common share (and common share equivalents, if applicable)
- Net income per share on a fully diluted basis

[2] Average number of shares of common stock outstanding during each period was ..... (as adjusted to given effect to stock dividends or stock splits).

10. By renumbering paragraphs (b)–(h) as paragraphs (c)–(i) of § 240.15c2–8 and adding a new paragraph (b) to that section to read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(b) In connection with an issue of securities, the issuer of which has not previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934 or is required to include in the prospectus reference to material risks pursuant to Item 501(d) of Regulation S–K (17 CFR 229.500), such broker or dealer shall deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. By removing Items 1, 2, and 3; adding a new Item 1; and renumbering Item 4 as Item 2 of § 249.208a to read as follows:

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Information Required in Registration Statement

Item. 1. *Description of Registrant's Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 2. *Exhibits.*

* * * * *

12. By removing Items 4, 5 and 6; adding a new Item 4; renumbering Item 7 as Item 5; and revising the Instructions as to Exhibits of § 249.208b to read as follows:

§ 249.208b Form 8–B, for registration of securities of certain successor issuers pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 4. *Description of Registrant's Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 5. *Financial Statements and Exhibits.*

* * * * *

Instructions as to Exhibits

Subject to Rule 12b–32 (17 CFR 240.12b–32) regarding the incorporation of exhibits by reference, the following exhibits shall be filed a part of the application or statement. 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 5.

* * * * *

13. By removing Items 4, 9, 10, 12, 13 and 14; adding new Items 8, 10 and 13; renumbering Items 5, 6, 7, 8, 11, 15, 16 and 17 as Items 4, 5, 6, 7, 9, 11, 12 and 14; and revising Items 1, 2 and 3 and renumbered Items 4, 5, 6, 7, 9, 11, 12 and 14 of § 249.210 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 1. *Business.*

Furnish the information rquired by Item 101 of Regulation S–K (17 CFR 229.100).

Item 2. *Financial Information.*

Furnish the information required by Items 301 and 303 of Regulation S–K (17 CFR 229.300).

Item 3. *Properties.*

Furnish the information required by Item 102 of Regulation S–K (17 CFR 229.100).

Item 4. *Security Ownership of Certain Beneficial Owners and Management.*

Furnish the information required by Item 403 of Regulation S–K (17 CFR 229.400).

Item 5. *Directors and Executive Officers.*

Furnish the information required by Item 401 of Regulation S–K (17 CFR 229.400).

Item 6. *Management Remuneration and Transactions.*

Furnish the information required by Item 402 of Regulation S–K (17 CFR 229.400).

Item 7. *Legal Proceedings.*

Furnish the information required by Item 103 of Regulation S–K (17 CFR 229.100).

* * * * *

Item 8. *Market Price of and Dividends on the Registrant's Stock and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S–K (17 CFR 229.200).

Item 9. *Recent Sales of Unregistered Securities.*

Furnish the information required by Item 701 of Regulation S–K (17 CFR 229.500).

Item 10. *Description of Registrant's Securities to be Registered.*

Furnish the information required by Item 202 of Regulation S–K (17 CFR 229.200).

Item 11. *Indemnification of Directors and Officers.*

Furnish the information required by Item 510(a) of Regulation S–K (17 CFR 229.500).

Item 12. *Financial Statements and Supplementary Data.*

Furnish all financial statements required by Regulation S–X and the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300).

Item 13. *Disagreements With Accountants on Accounting and Financial Disclosure.*

Furnish the information required by Item 304 of Regulation S–K (17 CFR 229.300).

Item 14. *Financial Statements and Exhibits.*

(a) List separately all financial statements filed as part of the registration statement.

(b) Furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

Signatures

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)

Date _____

By _____

(Signature) *

§ 249.212 [Removed]

14. By removing § 249.212.

§ 249.214 [Removed]

15. By removing § 249.214.

§ 249.216 [Removed]

16. By removing § 249.216.

17. By adding a new Instruction F and a new Instruction 4 to Item 7(a); renumbering current Instruction 4 to Item 7(a) as Instruction 5; and revising Instructions A, B, C and D, Items 1(b), 4(d) and 7(b) and renumbered Instruction 5 to Item 7(a) of § 249.308 to read as follows:

§ 249.308 Form 8–K, for current reports.

* * * * *

General Instructions

A. Rule as to Use of Form 8–K

Form 8–K shall be used for current reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a–11 (17 CFR 240.13a–11) or Rule 15d–11 (17 CFR 240.15–11).

B. Events to be Reported and Time for Filing of Reports

1. A report of this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4 and 6 of this form. Reports of events specified in those items are to be filed within 15 days after the occurrence of the earliest such event reported.

2. Since a report on this form pursuant to Item 5 is optional, there is correspondingly no mandatory time for filing. Registrants are encouraged, however, to file promptly after the occurrence of any event therein reported.

3. If substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b–2 (17 CFR 240.12b–2).

4. When considering current reporting on this form, particularly of other events of material importance pursuant to Item 5, registrants should have due regard for the accuracy, completeness and currency of the information in registration statements filed under the Securities Act of 1933 which incorporate by reference information in reports filed pursuant to the Securities Exchange Act of 1934, including reports on this form.

C. Application of General Rules and Regulations

1. The General Rules and Regulations under the Act (17 CFR Part 240) contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

2. Particular attention is directed to Regulation 12B (17 CFR 240.12b–1 et seq.) which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b–2 should be especially noted. See also Regulations 13A (17 CFR 240.13a–1 et seq.) and 15D (17 CFR 240.15d–1 et seq.).

D. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

* * * * *

F. Incorporation by Reference

If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a press release or other document or statement containing information meeting some or all of the requirements of this form, the information called for may be incorporated by reference

* Print name and title of signing officer under his signature.

to such published document or statement, in answer or partial answer to any item or items of this form, provided copies thereof are filed as an exhibit to the report on this form.

Information To Be Included in the Report

Item 1. Changes in Control of Registrant.

* * * * *

(b). Furnish the information required by Item 403(c) of Regulation S–K (17 CFR 229.400).

* * * * *

Item 4. Changes in Registrant's Certifying Accountants.

* * * * *

(d) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and, if not, stating the respects in which he does not agree. The registrant shall file copies of the former accountant's letter as an exhibit to the report on this form. If the former accountant's letter is unavailable at the time of filing, it shall be filed within thirty days thereafter.

* * * * *

Item 7. Financial Statements and Exhibits.

List below the financial statements and exhibits, if any, filed as part of this report.

(a) * * *

Instructions.

* * * * *

4. Extension of Time for Filing.

If the required financial statements for an acquired business are not available at the time the report on Form 8–K is filed, the registrant should so indicate in the Form 8–K report, and should file such of the required financial statements as are available. In such circumstances, the registrant may also, at its option, include unaudited financial statements in the report on Form 8–K. In all cases, the required financial statements for an acquired business should be filed under cover of Form 8 as soon as available but not later than 60 days after the report on Form 8–K is filed. The Commission may, upon the written request of the registrant and where consistent with the protection of investors, extend the time for filing the financial statements herein required beyond that provided above. A written request for such relief should be submitted separately from the subject report or cover letter to the report and, where necessary for a determination of the request, shall set forth the same information as called for in Instruction 5 below.

5. Filing of Other Financial Information in Certain Cases. The Commission may, upon the written request of the registrant and where consistent with the protection of investors, permit the omission of one or more such financial statements or the filing in substitution therefor of appropriate statements or information of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practical difficulties. A written request for such relief should be submitted separately from the subject report or the cover letter to the report.

The request shall set forth the following information:

(a) The reason(s) for the unavailability of the audited financial statements;

(b) The estimated costs of the audit;

(c) An explanation of any other practical auditng problems;

(d) A letter from the registrant's independent auditors confirming the above representation; and

(e) A tabular presentation of the following items of information, comparing the acquired business(es) with the registrant on a consolidated basis (excluding the acquired business(es)):

(1) gross sales and operating revenues;

(2) net income;

(3) total assets;

(4) total stockholder equity; and

(5) total purchase price compared to total assets of registrant.

The Commission may also be informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements and information herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 601 of Regulation S-K. (17 CFR 229.600).

18. By adding a new General Instruction E; redesignating General Instructions E, F and G as F, G and H; and revising redesignated General Instruction F, Item 2 in Part I, and Items 1 and 6(a) in Part II of § 249.308a as follows:

§ 249.308a Form 10–Q, for quarterly reports under section 13 of 15(d) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

E. Integrated Reports to Security Holders

Quarterly reports to security holders may be combined with the required information of Form 10–Q and will be suitable for filing with the Commission if the following conditions are satisfied:

(1) The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

(2) If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form 10–Q. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

F. Filed Status of Information Presented

1. Pursuant to Rule 13a–13(d) and Rule 15d–13(d), the information presented in satisfaction of the requirements of Items (1) and (2) of Part I of this form, whether included directly in a report on this form, incorporated therein by reference from a report, document or statement filed as an exhibit to Part I of this form pursuant to Instruction D(1) above, included in an integrated report pursuant to Instruction E above, or contained in a statement regarding computation of per share earnings or a letter regarding a change in accounting principles filed as an exhibit to Part I pursuant to Item 601 of Regulation S–K (17 CFR 229.600), except as provided by Instruction F(2) below, shall not be deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

* * * * *

Part I—Financial Information

* * * * *

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Item 303 of Regulation S–K (17 CFR 229.300).

Part II—Other Information

* * * * *

Item 1. Legal Proceedings.

Furnish the information required by Item 103 of Regulation S–K (17 CFR 229.100). As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

* * * * *

Item 6. Exhibits and Reports on Form 8–K (17 CFR 249.308).

(a) Furnish the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

* * * * *

19. By adding a new General Instruction H, Item 4 and Item 9; redesignating General Instructions H and I as I and J; renumbering Items 4, 9, 10 and 11 as Items 12, 10, 11 and 13; and revising General Instructions D and G, redesignated Instruction J, Items 1, 2, 3, 5, 6, 7 and 8 and renumbered Items 10, 11, 12 and 13 of § 249.310 as follows:

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and

all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

(2)(a) The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report shall be signed by the majority of the board of directors of any corporate general partner who signs the registration statement. (b) The name of each person who signs the report 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 report. Attention is directed to Rule 12b–11 (17 CFR 240.12b–11) concerning manual signatures and signatures pursuant to powers of attorney.

* * * * *

G. Information to be Incorporated by Reference

* * * * *

(3) The information required for by Part III (Items 10, 11 and 12) shall be incorporated by reference from the registrant's definitive proxy statement (filed or 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 or information statement is not filed with the Commission in the 120-day period, 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 (17 CFR 229.400) may be included in Part I of Form 10–K under an appropriate caption. See Instruction 4 to Item 401(b) of Regulation S–K (17 CFR 229.400). (4) No item numbers of captions of items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b–23(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 9) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 10, 11 and 12) by incorporation by reference from a definitive proxy statement of information statement involving the election of directors, then, notwithstanding General Instruction C(1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

H. Integrated Reports to Security Holders

Annual reports to security holders may be combined with the required information of Form 10–K and will be suitable for filing with the Commission if the following conditions are satisfied:

(1) The combined report contains full and complete answers to all items required by Form 10–K. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form 10–K is omitted by virtue of General Instruction G, a definitive proxy or information statement shall be filed.

(2) The cover page and the required signatures shall be included. As appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

I. Registrants Filing on Form S–18

* * * * *

J. Omission of Information by Certain Wholly-Owned Subsidiaries

* * * * *

(2) * * *

(b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S–K (17 CFR 229.600).

(c) Such registrants may omit the information called for by the following otherwise required Items: Item 10, Directors and Executive Officers of the Registrant; Item 11, Management Remuneration and Transactions; and Item 12, Security Ownership of Certain Beneficial Owners and Management.

* * * * *

Securities and Exchange Commission, Washington, D.C. 20549

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

State the aggregate market value of the voting stock held by nonaffiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405).

Note.—If a determination as to whether a particular person or entity is an affiliate cannot be made without incurring inordinate time and expense, the aggregate market value of the common stock held by nonaffiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumtions are set forth in this form.

* * * * *

Part I

* * * * *

Item 1. Business.

Furnish the information required by Item 101 of Regulation S–K (17 CFR 229.100) except that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 2. Properties.

Furnish the information required by Item 102 Regulation S–K (17 CFR 229.100).

Item 3. Legal Proceedings.

(a) Furnish the information required by Item 103 of Regulation S–K (17 CFR 229.100).

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by Item 103 of Regulation S–K (17 CFR 229.100), including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter was submitted during the fourth fiscal quarter to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose terms of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a–11 (17 CFR 240.14a–11) of Regulation 14A under the Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions:

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors

as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report.

Part II

* * * * *

Item 5. Market for Registrant's Common Stock and Related Security Holder Matters.

Furnish the information required by Item 201 of Regulation S–K (17 CFR 229.200).

Item 6. Selected Financial Data.

Furnish the information required by Item 301 of Regulation S–K (17 CFR 229.300).

* * * * *

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation.

Furnish the information required by Item 303 of Regulation S–K (17 CFR 229.300).

Item 8. Financial Statements and Supplementary Data.

Furnish financial statements meeting the requirements of Regulation S–X (17 CFR 210) and the supplementary financial information required by Item 302 of Regulation S–K (17 CFR 229.300). Financial statements of the registrant and its subsidiaries consolidated [as required by Rule 14a–3(b)] shall be filed under this Item. Other financial statements and schedules required under Regulation S–X may be filed as "Financial Statement Schedules" pursuant to Item 13, Exhibits, Financial Statement Schedules, and Reports on Form 8–K, of this form.

Item 9. Disagreements on Accounting and Financial Disclosure.

Furnish the information required by Item 304 of Regulation S–K (17 CFR 229.300).

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant.

Furnish the information required by Item 401 of Regulation S–K (17 CFR 229.400).

Item 11. Management Remuneration and Transactions.

Furnish the information required by Item 402 Regulation S–K (17 CFR 229.400).

Item 12. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by Item 403 of Regulation S–K (17 CFR 229.400).

Part IV

Item 13. Exhibits, Financial Statement Schedules, and Reports on Form 8–K.

(a) * * *

(3) Those exhibits required by Item 601 of Regulation S–K (17 CFR 229.600) and by paragraph (c) below. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this Item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an "exhibit." See Rule 12b–23.

* * * * *

(c) Registrants shall file, as exhibits to this Form the exhibits required by Item 601 of Regulation S–K (17 CFR 229.600).

* * * * *

§ 249.314 [Removed]

20. By removing § 249.314.

§ 249.316 [Removed]

21. By removing § 249.316.

§ 249.404 [Removed]

22. By removing § 249.404.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

23. By revising paragraphs (b)(1)(i) and (2) and (c)(3) of § 250.103A to read as follows:

§ 250.103A 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, 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.

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.300), management's discussion and analysis of financial condition and results of operations, of Item 302 of Regulation S–K (17 CFR 229.300), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, or in an annual report to shareholders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934.

(c) * * *

3. A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S–K (17 CFR 229.300); or

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

24. By revising paragraphs (b)(1)(i) and (2) and (c)(3) of § 260.0–11 to read as follows:

§ 260.0–11 Projections of future economic performance 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 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 13(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (17 CFR 229.300), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (17 CFR 229.300), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, or in an annual report to shareholders meeting the requirements of Rule 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934.

(c) * * *

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S–K (17 CFR 229.300); or

* * * * *

(Sec. 19(a), 48 Stat. 209; secs. 3(b), 12, 13, 14, 15(d) and 23(a), 48 Stat. 882, 892, 894, 895 and 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 3, 4, 5 and 6(d), 78 Stat. 565–574; sec. 28(c), 84 Stat. 1435; secs. 3 and 18, 89 Stat. 104 and 155; sec. 20(a), 49 Stat. 833; sec.

319(a), 53 Stat. 1149, 15 U.S.C. 77s(a), 78(c), 78*l*, 78m, 78(n), 78o(d), 78w(a), 79t, 77nn(a)).

Authority

These amendments are being proposed pursuant to the authority in Sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934. The amendments to the safe harbor rules for projections also are being proposed pursuant to Section 19(a) of the Securities Act of 1933, Section 20(a) of the Public Utility Holding Company Act of 1935 and Section 319(a) of the Trust Indenture Act of 1939.

By the Commission.

George A. Fitzsimmons,

Secretary.

August 6, 1981.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Securities Act Release No. 6338 (August 6, 1981), "Integrated Disclosure: Proposed Implementing Amendments to Rules, Forms and Schedules Under the Securities Exchange Act of 1934; Proposed Clarification of Safe Harbor Rules for Projections Under the Securities Act," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for such certification are that the proposed amendments will apply only to those entities (including small entities) that are already subject to the Commission's rules and regulations, and that these proposed amendments are expected to result in a minor net reduction in costs to all registrants. It is anticipated that the effects of the proposed amendments will not be significant for any class of registrants. Thus, the proposed amendments will not have a significant economic impact on any small entities.

Dated: August 6, 1981.

John S.R. Shad,

Chairman.

[FR Doc. 81-23445 Filed 8-13-81; 12:56 pm]

BILLING CODE 8010-01-M

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Tuesday, August 18, 1981

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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.**

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