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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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

Equal Access to Justice Act; Implementation

AGENCY: Federal Labor Relations Authority and General Counsel of the Federal Labor Relations Authority.

ACTION: Interim rules and regulations; extension of expiration date.

SUMMARY: The interim rules and regulations of the Federal Labor Relations Authority and General Counsel of the Federal Labor Relations Authority governing awards of attorney fees and other expenses (46 FR 48623 (1981)) (to be codified as 5 CFR 2430) will expire no later than July 15, 1982.

EFFECTIVE DATE: March 12, 1982.

FOR FURTHER INFORMATION CONTACT: William A. Michie, Labor Relations Specialist, Operations and Technical Assistance, Federal Labor Relations Authority, 500 C Street, SW., Room 201 Washington, D.C. 20424, (202) 382–0891.

SUPPLEMENTARY INFORMATION: The summary comments that accompanied the interim rules and regulations of Part 2430, Chapter XIV of Title 5 of the Code of Federal Regulations when published in the Federal Register on Friday, October 2, 1981 (46 FR 48623), stated the interim rules and regulations would expire no later than March 15, 1982. The expiration date for these interim rules and regulations is amended to be no later than July 15, 1982.

Dated: March 11, 1982.
For the Authority:

James J. Shepard,
Executive Director.

For the General Counsel:

S. Jesse Reuben,
Deputy General Counsel.

[FR Doc. 82-7036 Filed 3-15-82; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; Banding and Documentation Requirements for Interstate Movement From Calif. of Certain Psittacine Birds.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document establishes banding and documentation requirements for the interstate movement from California of certain psittacine birds. These requirements appear to be necessary as an emergency measure to help prevent the interstate movement from California of certain illegally imported psittacine birds, and thereby to help prevent the spread of exotic Newcastle disease (viscerotropic velogenic Newcastle disease).

DATES: The effective date of this document is March 16, 1982. Written comments concerning this interim rule must be received on or before May 17, 1982.

ADDRESS: Written comments concerning this interim rule should be submitted to the Deputy Administrator, Veterinary Services, APHIS, USDA, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 870 of the Federal Building, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: K. A. Hand, staff veterinarian, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, Federal Building, Room 743, Hyattsville, MD 20782, 301–436–8065.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." The Department has determined that this rule will not cause a significant increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The emergency nature of this action makes it impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule.

Dr. J. K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim rule. Due to the possibility that exotic Newcastle disease (viscerotropic velogenic Newcastle disease) could be spread interstate from California by the movement of certain psittacine birds, a situation exists requiring immediate action to restrict such movements of these birds.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

Regulatory Flexibility Act

The interim rule amends 9 CFR Part 82 by establishing banding and documentation requirements for the

interstate movement from California of certain psittacine birds. Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim rule provides that certain psittacine birds shall not be moved interstate from California unless banded with a legband issued pursuant to provisions of 9 CFR Part 92, or unless banded with a legband issued pursuant to § 82.6(b) of the interim rule.

The interim rule also provides that each bird requiring a legband must also be accompanied by a waybill, an invoice, or a similar document, signed and dated by a federal inspector in accordance with procedures in § 82.6(b) of the interim rule, stating:

(1) The point in California from which the bird is intended to be moved interstate,

(2) The destination of the bird,

(3) The species and common names, and the number of birds covered by the document,

(4) The name and address of the owner or shipper of the bird, and

(5) The identifying legband number on the bird.

Section 82.6(b) of the interim rule further provides that a legband shall be issued by a federal inspector, and that a waybill, an invoice, or a similar document shall be signed and dated by a federal inspector, if , based on the inspector's examination of the bird, there is no evidence that the bird is exposed to or infected with VVND, and if there is no substantial evidence that the bird was imported contrary to the provisions of 9 CFR Part 92. The interim rule provides that the legbands and the services of the inspector during regularly assigned hours of duty will be furnished without cost to the public.

The interim rule for the most part utilizes a banding system that is already in use. Under the provisions of 9 CFR Part 92, psittacine birds imported into the United States, with certain exceptions, are required to be quarantined at the time of importation, and at the quarantine facility each psittacine bird is required to be individually identified by the Department with a legband. Approximately 95 percent of all the psittacine birds (not including illegally imported psittacine birds) moved interstate from California are already meeting the banding requirements of the interim rule since they are being banded under 9 CFR Part 92 as a result of being held at quarantine facilities at the time of importation. These bands are not customarily removed from the birds by the importers. Further, it appears that there would be no significant costs involved in obtaining legbands under § 82.6(b) of the interim rule for the interstate movement of birds from California.

It appears that the documentation requirements would not impose significant burdens on persons moving psittacine birds interstate from California. Almost all of the shipments subject to the interim rule would be commercial shipments. It is standard business practice for waybills, invoices, or other similar documents to contain most of the required information and to accompany commercial shipments of birds.

Further, most shipments of birds subject to the requirements of the interim rule would be moved interstate directly from quarantine facilities or major holding facilities. Federal inspectors are readily available to issue legbands, or sign and date documents at these facilities. Further, federal inspectors will be made available to perform the necessary services for the interstate movement from California of any birds not originating from such quarantine or holding facilities and meeting the requirements of this interim rule.

Background

Viscerotropic velogenic Newcastle disease (VVND), or exotic Newcastle disease, is a contagious viral disease which affects poultry and birds. VVND is fatal to a large percentage of poultry and birds that become infected. When it does not cause death in poultry, drastic decreases in production capacity result.

Although VVND is not established in the United States, it is established in most foreign countries. Since 1950, when exotic Newcastle disease first appeared in the United States, there have been numerous cases of VVND. When a positive case of VVND is diagnosed, action is taken to prevent its further spread and to eradicate the disease. In the period from 1974 through August 1980, fewer than 75 positive VVND cases were diagnosed in the United States. Recently there has been a drastic increase in positive cases: 105 have occurred since September 1, 1980. Illegally imported psittacine birds have been determined to be the vector responsible for these recent VVND cases.

Since 1972 it has cost approximately $72 million to eradicate outbreaks of VVND. It is estimated that if the eradication efforts were not successful, losses caused by VVND could exceed $400 million annually.

To help prevent the introduction into the United States of VVND, the Department has established regulations in 9 CFR Part 92 designed, among other things, to restrict the importation of psittacine birds. These regulations require psittacine birds imported into the United States, with certain exceptions, to be quarantined at the time of importation. Pursuant to § 92.11(e), each psittacine bird at the quarantine facility is required to be individually identified by the Department with a legband. The band must bear a serial number which has been coded to the quarantine facility, or must bear other suitable means of identification. In accordance with the regulations, those psittacine brids found to have VVND are refused entry into the United States. Those found not to be infected with VVND or certain other communicable diseases of poultry are allowed to be imported. Accordingly, for those birds allowed entry into the United States, the legband represents that at the time of release from the bird quarantine facility the bird was determined to be free of certain diseases, including VVND.

Many psittacine birds are illegally imported each year. One reason for the illegal importation is to avoid the restrictions imposed by 9 CFR Part 92, including the quarantine requirements. However, certain psittacine birds are also listed as endangered or threatened species under the endangered species laws, and it appears that they are also illegally imported to avoid restrictions under those laws. Further, there is a lucrative market for illegally imported psittacine birds. The retail value of legally imported psittacine birds ranges from approximately $150 per bird to more than $2500 for a rare bird.

California appears to be unique with respect to the illegal importation of psittacine birds. A substantial portion of illegally imported psittacine birds is initially imported into California. Further, there appears to be a ready market in California for these illegally imported birds, and California appears to be the major distribution center for these illegally imported birds that are moved interstate. All of the VVND cases diagnosed in the United States since January 1, 1981, have been traced to psittacine birds illegally imported into California. Illegally imported psittacine birds shipped interstate from California have been the source of VVND outbreaks in Nevada, Arizona, Colorado, and Florida during the past ten months.

In addition to the restrictions in 9 CFR Part 92 designed to help prevent the

introduction of VVND into the United States, the Department has also established regulations designed to prevent the interstate spread of the disease. In this connection, regulations in 9 CFR Part 82 provide, among other things, that psittacine birds from areas quarantined because of VVND may not be moved interstate except under specified conditions.

Under the circumstances described above concerning California, it is necessary, on an emergency basis, to amend 9 CFR Part 82 by establishing an interim rule imposing banding and documentation requirements on the interstate movement from California of certain psittacine birds. Accordingly, 9 CFR Part 82 is amended by adding a new § 82.6 providing that psittacine birds, other than budgerigars, lovebirds, or cockatiels, and other than two or fewer pet birds accompanied by the owner, may not be moved interstate from California unless banded with a legband. It is provided that legbands are to be issued pursuant to the provisions of 9 CFR Part 92, or issued by a federal inspector based on procedures in § 82.6(b) of the interim rule. The interim rule also provides that each bird required to be banded with a legband must also be accompanied by a waybill, an invoice, or a similar document, signed and dated by a federal inspector in accordance with procedures in § 82.6(b) of the interim rule, stating:

(1) The point in California from which the bird is intended to be moved interstate,

(2) The destination of the bird,

(3) The species and common names, and number of birds covered by the document,

(4) The name and address of the owner or shipper of the bird, and

(5) The identifying legband number on the bird.

The interim rule provides the same procedures for the issuance of legbands for birds that do not have legbands issued under 9 CFR Part 92, and for obtaining the signature and date for the documentation. In this connection § 82.6(b) of the interim rule provides that a legband shall be issued by a federal inspector, and that a waybill, an invoice, or a similar document shall be signed and dated by a federal inspector, if, based on the inspector's examination of the bird, there is no evidence that the bird is exposed to or infected with VVND, and if the inspector determines that there is no substantial evidence that the bird was imported contrary to the provisions of 9 CFR Part 92.

The banding and documentation requirements are designed to help prevent the interstate movement from California of illegally imported psittacine birds, and thereby to help prevent the interstate spread of VVND.

Under the interim rule, it is unlawful for any person to move the specified birds interstate from California unless the birds are banded with an authorized legband and accompanied by specified documentation. The term "person" is defined in 9 CFR Part 82 (See § 82.1(d)) as "any person, company, or corporation." This includes commercial carriers. Most of the psittacine birds, including illegally imported birds, that have been moved interstate from California have been moved by commercial carriers. Prior to the establishment of the interim rule there was no prescribed method to help determine whether a bird had been illegally imported, and commercial carriers had no basis for refusing to carry illegally imported birds. It appears that the rule would be effective in eliminating a major portion of the interstate movement from California of illegally imported psittacine birds by commercial carriers. Illegally imported psittacine birds would not be banded or accompanied by a document signed and dated by a federal inspector and thereby could be easily distinguished from psittacine birds which were legally imported into California or raised domestically. It further appears that the rule would tend to increase the cost of shipping illegally imported psittacine birds since more costly alternatives would have to be used. Consequently, it is anticipated that the increased costs would help reduce markets for the illegally imported birds, and thereby reduce the risk of spread of VVND.

Further, the banding and documentation requirements will provide inspectors with a system under which they can better determine whether birds moving interstate from California are illegally imported psittacine birds presenting a risk of spreading VVND.

Budgerigars, lovebirds, and cockatiels are excluded from the new requirements. These birds are bred domestically in great numbers and are available at prices that eliminate incentive for illegal importations.

Further, pet birds in a lot of two or fewer which are accompanied by the owner and moved for other than sale are excluded from the new requirements. This is because it has been determined, based on Departmental expertise, that under these circumstances such birds would not present a significant risk of spreading VVND. Generally, pet birds remain caged in the home of the owner and are thereby isolated from all other birds and poultry. The Department is reasonably certain that lots of two or fewer birds which are accompanied by the owner are in fact pet birds and not intended for sale.

To clarify the meaning of the term "pet bird", this interim rule amends 9 CFR Part 82 to add a new § 82.1(q) in which the term "pet bird" is defined.

As noted above, § 82.6 of the interim rule provides procedures for obtaining legbands for birds that do not have legbands issued under 9 CFR Part 92. Most of the birds that would be eligible to be banded under such procedures would be domestically raised birds.

Also, § 82.6(c) of the interim rule provides that the legbands issued under § 82.6(b) of the interim rule and the services performed under the interim rule by the inspector during regularly assigned hours of duty shall be furnished without cost to the person moving the birds interstate from California. In addition, a footnote is added to provide that information about obtaining legbands, and signatures and dates is available from federal Veterinary Services personnel, and that the local offices are listed in the telephone directory. Further, the interim rule also provides for procedural requirements when a federal inspector denies the issuance of a legband or withholds a signature and date.

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY

Accordingly, 9 CFR Part 82, is amended as follows:

1. In § 82.1 a new paragraph (q) is added to read as follows:

§ 82.1 Definitions

* * * * *

(q) *Pet bird.* Any bird which is kept for personal pleasure and is not for sale.

2. In Part 82, a new § 82.6 is added to read as follows:

§ 82.6 Restrictions on interstate movement of certain psittacine birds from California.

(a) No person shall move interstate from California a psittacine bird, other than a budgerigar, lovebird, or cockatiel, and other than each pet bird in a lot of two are fewer pet birds accompanied by the owner, unless:

(1) The bird is banded with a legband issued pursuant to § 92.11(e) of this chapter or issued pursuant to paragraph (b) of this section,[7] and

[7] Information about obtaining legbands, or signatures and dates is available from federal Veterinary Services personnel. Local offices are listed in the telephone directories.

(2) The bird is accompanied by a waybill, an invoice, or a similar document, signed and dated by a federal inspector,[7] stating:

(i) The point in California from which the bird is intended to be moved interstate,

(ii) The destination of the bird,

(iii) The species and common names, and number of birds covered by the document,

(iv) The name and address of the owner or shipper of the bird, and

(v) The identifying legband number on the bird.

(b) For compliance with provisions of paragraph (a) of this section, a legband shall be issued by a federal inspector for a psittacine bird, or a document shall be signed and dated by a federal inspector for the interstate movement of a psittacine bird from California, if, based on the federal inspector's examination of the bird, there is no evidence that the bird is exposed to or infected with exotic Newcastle disease, and if the inspector determines that there is no substantial evidence that the bird was imported contrary to the provisions of Part 92 of this chapter. Such a legband may be denied, or the signature and date may be withheld, upon a finding that the bird is exposed to or infected with exotic Newcastle disease or that there is substantial evidence to establish that the bird was imported contrary to the provisions of Part 92 of this chapter. The reasons for the denial or withholding shall be confirmed in writing as promptly as circumstances allow. Any person who has been denied the issuance of a legband or had a signature and date withheld may appeal the decision in writing to the Deputy Administrator within twenty days after receiving a written confirmation of such action. The appeal shall state all of the facts and reasons upon which the person relies to show that the legband was wrongfully denied or that the signature and date were wrongfully withheld. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(c) The legbands issued pursuant to paragraph (b) of this section and the services performed pursuant to paragraph (b) of this section by federal inspectors during regularly assigned hours of duty shall be furnished without cost.

(Sec. 2, 32 Stat. 792, as amended (21 U.S.C. 111); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 11th day of March 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-7098 Filed 3-15-82; 8:45 am]

BILLING CODE 3410-34-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0018]

Interest on Deposits, Premiums, Finders Fees, and the Payment of Interest

AGENCY: Depository Institutions Deregulation Committee

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") is adopting in final form a temporary amendment to its rule concerning the use of premiums by depository institutions (12 CFR 1204.109). This temporary amendment of the premium rule was published for comment on February 26, 1981 (46 FR 15131); it prohibits depository institutions from soliciting the opening of multiple accounts from a depositor in order to provide for more than one premium at a time to such depositor. The purpose of the rule is to eliminate the circumvention of the objectives of the premium rule by depository institutions that advertise premium programs in which lump sum deposits brought in by a depositor would be broken up by the institution and placed in multiple accounts for the purpose of enabling the institution to give a premium for each account.

EFFECTIVE DATE: April 15, 1982.

FOR FURTHER INFORMATION CONTACT: Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), David Ansell, Attorney, Office of the Comptroller of the Currency (202/447-1880), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), Veryl V. Miles, Attorney, Board of Governors of the Federal Reserve System (202/452-3611), or Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798).

SUPPLEMENTARY INFORMATION: The Committee's rule concerning the use of premiums (12 CFR 1204.109), effective December 31, 1980, provides that premiums, whether in the form of merchandise, credit or cash, will not be regarded as a payment of interest if: (1) The premium is given to a depositor only when a new account is opened, an existing account is renewed, or funds are added to an existing account; (2) no more than two premiums *per account* are given in any 12-month period; and (3) the value of the premium, or, if merchandise is given, its total cost to the institution, is no more than $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more. After the rule was adopted, an increasing number of depository institutions advertised programs in which a lump sum brought in by a depositor could be broken up by the institution and placed in multiple accounts for the purpose of enabling the institution to give a premium for each account. These programs made it possible for the depository institutions to provide more premiums than would otherwise be permitted if the funds had been placed in one account. These programs had the capacity for undermining and circumventing the objectives of the Committee in adopting the rule.

In its efforts to curtail the practice of opening multiple accounts for a depositor in order to receive multiple premiums and to clarify its original intent in adopting the premium rule, the Committee adopted a temporary amendment, effective February 26, 1981, prohibiting depository institutions from soliciting or promoting deposits from customers on the basis that the funds would be divided into more than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period. The Committee also asked for public comments by April 1, 1981, on the temporary amendment and on alternative methods to deal with this problem on a permanent basis.

The Committee received 215 comments: 92 commentators were in favor of the amendment and 29 were in opposition to the amendment. The remaining 94 commentators did not express definitive positions in favor of the amendment or in opposition to the amendment. Their comments were included in the specific comments considered by the Committee regarding alternative methods to achieve compliance with the premium rule and general comments made regarding premiums.

Many of the commentators in favor of the temporary amendment also expressed the opinion that it would not be sufficient in curtailing the opening of multiple accounts by those depositors who are aware that multiple premiums can be obtained by opening multiple accounts. Others in favor of the amendment indicated that such an

amendment was not objectionable, so long as it did not prohibit depository institutions from giving multiple premiums if the depositor independently decides to open multiple accounts.

With respect to the request for alternative methods of preventing the circumvention of premiums rules, 73 institutions suggested that premiums be banned completely. Another alternative recommended by 53 institutions was that premiums be permitted on a per depositor/per household basis instead of a per account basis. In addition to the recommendation that premiums be permitted on a per depositor/per household basis, 41 institutions pointed out that this alternative would be too costly and too difficult to monitor and administer. Several of these institutions also expressed the opinion that this alternative would create depositor disloyalty, prompting depositors to deposit their funds at several different depository institutions in order to obtain additional premiums. It was also suggested that premiums be limited to branch openings, bank openings, anniversaries, mergers and consolidations; 20 institutions recommended this alternative.

Based upon the comments received and the Committee's experience with the temporary rule, the Committee concluded that the final adoption of the rule would be the most effective means of curtailing the circumvention of the premium rule and would enable depository institutions to provide premiums to customers in the manner the Committee intended. With respect to the alternatives suggested by the commentators to prevent further abuses of the objectives of the premium rule, the Committee believes that making the temporary rule permanent would be more effective in advancing its objectives. This is based on the view that adoption of a per depositor/per household rule would be both a financial and administrative burden for depository institutions to implement and would not directly address the immediate problem of soliciting the opening of multiple accounts by depository institutions.

PART 1204—INTEREST ON DEPOSIT

Pursuant to its authority under the Depository Institutions Deregulation Act (12 U.S.C. 3501 *et seq.*), the Committee amends Part 1204 (Interest on Deposits) by adding the following sentence to § 1204.109(a):

§1204.109 Premiums not considered payment of interest.

(a) * * * A depository institution is not permitted directly or indirectly to solicit or promote deposits from customers on the basis that the funds will be divided into more than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period.

* * * * *

By order of the Committee.

Steven Skancke,

Executive Secretary.

March 9, 1982.

[FR Doc. 82-7039 Filed 3-15-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 371, 373, 376, 379, 385, 386, and 399

Expansion of Foreign Policy Export Controls Affecting Libya

AGENCY: Office of Export Administration International Trade Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The President has directed that additional measures be taken to restrict a U.S. contribution to, and thereby to limit, Libyan capacity to engage in activities detrimental to the foreign policy of the United States. This issuance revises the Export Administration Regulations to place Libya in Country Group S and make other related changes.

DATES: These rules are effective March 12, 1982. Comments must be received by the Department by May 11, 1982.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION:

Regulatory Changes

Pursuant to the authority granted by section 6 of the Export Administration Act of 1979, the President has determined that foreign policy controls affecting exports to Libya should be expanded. Libya has been placed in Country Group S, with a validated export license now required for all technical data and commodities except:

1. Medicine and medical supplies;
2. Food and other agricultural commodities;
3. Items permitted under certain special purpose general licenses (including technical data freely available to the public); and
4. The export to Libya of nonstrategic foreign-produced direct product of U.S. origin technical data.

Existing controls for Libya affecting off-highway wheel tractors and aircraft continue in effect, as do existing controls for anti-terrorism purposes. Commodities and related technical data controlled for national security purposes, and oil and gas equipment and technical data not readily available abroad, will generally be denied except, on a case by case basis, for:

1. Export under existing contracts, where failure to obtain a license would not excuse performance under the contract;
2. Reexports of goods or technology not controlled for national security purposes which are already outside the United States on the effective date or exports of foreign products incorporating such items as components;
3. The use of 20 percent or less, by value, of U.S. origin components in foreign origin equipment.

Also, authorizations may be considered favorably for the reexport of goods and technical data controlled for national security purposes and exported prior to March 12, 1982, and other unusual situations such as transactions involving preexisting contractual commitments entered into prior to the effective date.

Validated export licenses issued prior to the effective date of these revisions are not affected. Exporters of items subject to the above denial policy, who have contracts entered into prior to the effective date of these revisions should, where appropriate, include certified copies of the contracts with their export license applications. In addition, exporters of oil and gas equipment and data should include any available evidence of foreign availability. Parties requesting authorization for reexport of national security controlled goods or data or of oil and gas equipment or data, should include with their requests shipping documents establishing the date of export from the United States. Disclosure of information obtained in connection with license applications or reexport request is subject to the confidentiality provisions contained in

section 12(c) of the Export Administration Act of 1979, as amended.

Parties who have exported commodities to Libya under General License GTE are notified that this general license may not be used for exports to Country Group S. Such commodities must be removed from Libya immediately, unless authorization for retention in Libya is received from the Office of Export Administration. Exporters holding Distribution Licenses are advised that these licenses are no longer valid for exports to Libya. Existing Project Licenses will not be affected by this change. Requests for amendments or extentions of Project Licenses will be reviewed on a case by case basis.

Saving Clause

This rule places a validated license requirement on certain commodities and technical data that previously could be exported under a general license. In addition it prohibits the use of Distribution Licenses for Libya. Therefore, shipments of commodities or technical data removed from general license or Distribution License, as a result of changes set forth in this rule that were on dock for lading, on lighter laden aboard an exporting carrier, or in transit to a port of export pursuant to actual orders for export prior to 8:00 a.m., E.S.T., March 12, 1982, may be exported under the existing applicable license provision up to and including March 26, 1982. Any such shipments not laden aboard the exporting carrier on or before March 26, 1982 require an individual validated license for export.

Statutory Requirements

Pursuant to section 6 of the Export Administration Act of 1979 and following consultation with the Department of State, it has been determined that this rule is necessary to further significantly, the foreign policy of the United States. Appropriate persons in industry and the Congress have been consulted, and the criteria set forth in section 6(b) of the Act have been considered.

Pursuant to section 4(c), it has been determined that, notwithstanding foreign availability, failure to take this action would be detrimental to the foreign policy of the United States.

Pursuant to section 6(d), it has been determined that there are no feasible alternative means of achieving the purpose of this action. As provided in section 6(g) efforts have been made to obtain cooperation of countries that produce comparable items.

Rulemaking Requirements

The Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.* (Supp. III 1979) ("the Act")), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing any final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 3501 *et seq.*

4. This rule is exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation," because it relates to a foreign affairs function of the United States.

The period for submission of comments will close on May 11, 1982. Comments received after the close of the comment period cannot be assured consideration in the development of the final regulations. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature, or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations. All public comments to be considered in any revision to these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review. Communications from agencies of the United States Government or foreign governments and proprietary information received during industry consultations will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration, Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration, Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

Supplement No. 1 to Part 370 [Amended]

1. Supplement No. 1 to Part 370 is amended by inserting "Libya" under "Country Group S, " which previously had been reserved.

PART 371—GENERAL LICENSES

§ 371.15 [Amended]

2. Paragraph 371.15(b) is amended by removing the phrase "S or".

PART 373—SPECIAL LICENSING PROCEDURES

3. Paragraph 373.2(b) is amended by removing the "or" at the end of § 373.2(b) (6), removing the period at the end of § 373.2(b) (7) and replacing it with a semicolon followed by the word "or", and adding a new § 373.2(b) (8) to read as follows:

§ 373.2 [Amended]

* * * * *

(b) * * *

(8) The project involves shipments to Libya.

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

§ 376.16 [Amended]

4. Section 376.16 is amended by removing the semicolon and the word "and" at the end of § 376.16(a) and inserting a period, and by removing §§ 376.16(b) and 376.16(c).

PART 379—TECHNICAL DATA

§ 379.4 [Amended]

5. Section 379.4(f) is amended by inserting "S," between "Q," and "W," each time they appear in the series "P, Q, W, Y, or Afghanistan" or "P, Q, W, Y, or Z or Afghanistan" (nine insertions).

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

§ 385.4 [Amended]

6. Section 385.4(d) is amended by removing "Libya," once in the title and once in the first sentence, and adding a footnote to the title to read: "Although not in Country Group V, the provisions of this paragraph remain applicable to Libya.".

7. Section 385.4(e) is removed and reserved.

8. A new § 385.7 is added to read as follows:

§ 385.7 Country Group S; Libya.

As authorized by section 6 of the Export Administration Act of 1979, the following special policies and procedures for commodities and technical data are in effect for Libya for foreign policy purposes.

(a) Except as stated below, a validated license or reexport authorization is required for all U.S.-orgin commodities or technical data, as well as foreign produced products of U.S. technical data exported from the United States after March 12, 1982 subject to national security controls for which written assurances against shipments to Libya are required under § 379.4 of the Export Administration Regulations. Excepted from this licensing requirement are medicines and medical supplies, food and other agricultural commodities, and commodities and data exported pursuant to special general licenses described in Parts 371 and 379. License applications and reexport requests will be reviewed in accordance with the licensing policies stated below.

(1) Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technical data, including controlled foreign produced products of U.S. technical data exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technical data, if determined by the Office of Export Administration not to be readily available from sources outside the United States.

(2) Notwithstanding the presumptions of denial in paragraph (a)(1) of this section:

(i) Licenses and authorizations generally will be issued when the transaction involves:

(A) The export or reexport of commodities or technical data under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(B) Reexport of goods or technical data not controlled for national security purposes that had been exported from the United States prior to March 12, 1982, or exports of foreign products incorporating such items as components; or

(C) Use of U.S. origin parts, components, or materials in foreign origin products destined for Libya, where the U.S. content is 20 percent or less by value.

(ii) Licenses and authorizations will generally be considered favorably on a case-by-case basis when the transaction involves:

(A) Reexports of goods or technical data subject to national security controls that were exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(B) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(3) All other exports and reexports will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(b) Libya has been designated by the Secretary of State as a nation repeatedly supporting acts of international terrorism. For licensing requirements relating to Anti-Terrorism Controls see 15 CFR 385.4(d).

(c) A validated license is required for the export to Libya of off-highway wheel tractors of carriage capacity of 10 tons or more, as defined in CCL entry 6490F. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of such tractors in reasonable quantities if for civil use.

(d) A validated license is required for foreign policy purposes for the export or reexport to Libya of any aircraft (including helicopters) and any parts and accessories controlled under ECCN's 1460A, 4460B, 5460F, 6460F, 1485A, and 1501A(a), (b)(1) and (c)(1). This control includes any such aircraft parts intended for use in the manufacture, overhaul, or rehabilitation in any third country of aircraft that will be exported or reexported to Libya or Libyan nationals. Applications for validated licenses will generally be approved on a case-by-case basis for aircraft unlikely to be diverted to military use because they are destined to a priority civil use. Applications will generally be denied for exports that would constitute a high risk of increasing Libyan capabilities to carry military cargo or troops or to conduct military reconnaissance or observation missions.

(e) In appropriate cases, applications for licenses and requests for extensions of licenses under paragraph (a) of this section must be accompanied by a certified true copy of a contract entered into prior to March 12, 1982. Where the custom in an industry is to rely upon agreements other than contracts, substitute documentation will be considered on a case-by-case basis. Requests for authorization to reexport must be accompanied by shipping documents establishing the date of export from the United States.

(f) Commodities and technical data subject to more than one type of control (e.g., national security, anti-terrorism, regional stability, nuclear nonproliferation) will be reviewed under all applicable standards. The most restrictive standard will be applied.

PART 386—EXPORT CLEARANCE

§ 386.6 [Amended]

9. Sections 386.6(d)(2)(i)(*b*) and 386.6(d)(3) are amended by inserting "Libya," between "Republic of China," and "North Korea" in each place.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Supplement No. 1 to § 399.1 [Amended]

10. Supplement No. 1 to § 399.1 is amended by adding a new footnote to ECCN 6999G, in the "Validated License Required" column, to read as follows:

Food, agricultural commodities, and medicines and medical supplies may be exported to Country Group S under General License G-Dest.

(Secs. 4, 6, 13, 15, and 21, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: March 11, 1982.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 82-7113 Filed 3-12-82; 10:40 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 155

Execution of Discretionary Orders by Floor Brokers; Exception to the Hand-Off Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretation.

SUMMARY: The Commodity Futures Trading Commission is issuing an interpretation of its regulation § 155.2(c). The regulation requires each contract market to adopt rules which prevent a floor broker who has discretionary authority over a customer's account from executing an order for that account without the prior specific consent of the customer. Under the regulation the floor broker is required to hand off orders he originates to another floor broker for execution. In a previous interpretation of regulation § 155.2(c) the Commission stated that orders which give a floor broker discretion as to the time and price of a futures transaction need not be handed off to another floor broker. In a recent rule submission a contract market requested Commission approval of a rule which would permit a broker to have discretion as to time, price and contract month in a futures transaction without handing off the order to another floor broker. The Commission has approved this rule and is notifying the public of the change in the Commission's interpretation of regulation § 155.2(c).

EFFECTIVE DATE: This interpretation is effective March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Stephen Braverman, Futures Trading Specialist, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: Commission regulation § 155.2, 17 CFR 155.2 (1981), states:

> Each contract market shall adopt and submit to the Commission for approval pursuant to section 5a(12) of the (Commodity Exchange) Act and § 1.41 of the regulations, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:
>
> * * * * *
>
> (c) Prohibit such member from executing any transaction for any account of another person for which buying and/or selling orders can be placed or originated, or for which transactions can be executed, by such member without the prior specific consent of the account owner, regardless of whether the general authorization for such orders or transactions is pursuant to a written agreement, except that orders for such an account may be placed with another member for execution.

When the Commission adopted this regulation it stated:

> Regulation § 155.2(c) is designed to prevent floor brokers from placing their personal trading interests ahead of their customers' interests when exercising trading discretion over such customers' accounts. Effective surveillance over such discretionary trading necessitates the requirement that all orders for an account for which a floor broker can place an order without first obtaining the account owner's specific consent to place that particular order be placed with another floor broker for execution. However, the newly adopted regulation makes it clear that a contract market need only prohibit its members form executing orders for accounts over which they have discretionary authority where that discretionary authority is such that the floor broker may originate orders for those accounts. This prohibition need not extend to accounts where the floor broker's discretion is limited to such things as the selection of the precise time and price at which an order originated by a customer is executed.[1]

The Commission also stated in a subsequent interpretive statement on regulation § 155.2(c):

> A question has arisen as to whether a floor broker may execute any . . . type of discretionary order [other than for time and price] and still be in compliance with § 155.2(c). The reason for the Commission's determination regarding price and time discretion orders was that the customer has limited the floor broker's discretion when he gives the broker only time and price discretion.
>
> In these situations the customer actually originates the order, not the floor broker. However, the more details of the order the broker decides the greater his exercise of discretion and the greater the potential for abuse that regulation § 155.2(c) is designed to prevent. Therefore, as interpreted by the Commission, regulation § 155.2(c) requires that discretionary orders giving the broker more latitude than price and time discretion must be handed off for execution.[2]

In a recent submission of a rule for Commission approval pursuant to section 5a(12) of the Commodity Exchange Act [3] the Board of Trade of the City of Chicago ("CBT") petitioned the Commission for a partial exemption from the requirements of regulation § 155.2(c).[4] The CBT requested that the Commission approve a rule which permits a floor broker to have discretion as to contract month, in addition to time and price, without handing off an order. The Commission gave careful consideration to the CBT's request and, notwithstanding its previous interpretive statement, now believes that contract month discretion also should be permitted under regulation § 155.2(c).

Regulation § 155.2(c) recognizes the significant conflicts of interest which arise from permitting a floor broker to trade both in his own account and for the accounts of customers and was designed to prevent such floor brokers from allocating profitable trades to their personal trading account or accounts of favored customers to the detriment of orders for customers' discretionary accounts. However, upon reconsidering its previous position, the Commission does not believe that allowing a floor broker to execute a customer-originated order which gives him contract month discretion in addition to time and price discretion is any more likely to result in the abuses regulation § 155.2(c) seeks to prevent than if the floor broker has only time and price discretion. In both cases the orders would be executable at the market price and, under exchange rules required by regulations § 155.2 (a) and (b), 17 CFR 155.2 (a) and (b) (1981),[5] the floor broker would be required to execute these customers' orders before

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[1] 41 FR 56134, 56136 (December 23, 1976).

[2] 42 FR 35004 (July 7, 1977).

[3] 7 U.S.C. 7a(12) (1976).

[4] The petition was submitted pursuant to Commission regulation § 155.10, 17 CFR 155.10 (1981).

[5] Regulations § 155.2 (a) and (b) provide:

> Each contract market shall adopt and submit to the Commission for approval pursuant to section 5a(12) of the Act and § 1.41 of the regulations, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as floor broker:
>
> (a) Prohibit such member from purchasing any commodity for future delivery for his own account, or for any account in which he has an interest, while holding an order of another person for the purchase of the same commodity which is executable at the market price or at the price at which such purchase can be made for the member's own account or the account in which he has an interest.
>
> (b) Prohibit such member from selling any commodity for future delivery for his own account, or for any account in which he has an interest, while holding an order of another person for the sale of the same commodity which is executable at the market price or at the price at which such sale can be made for the member's own account or the account in which he has an interest.

his personal trades. Given the current scope of floor brokers' authority to handle customers' orders while trading for their own accounts, the Commission sees no relevant distinction between trades executed by a floor broker which allow only time and price discretion and those which permit the broker the additional latitude to select the contract month.

Indeed, a customer may be placed at a competitive disadvantage if he gives his floor broker contract month discretion and the broker is required to hand off that order once he selects the contract month.[6] For example, a hedging customer may wish to offset a cash position in either of a number of months, and may instruct his broker to sell the month in which he can get the best price. If the floor broker is required to hand off this order after he has selected the most advantageous month for his customer, the chance of the order being filled at the best price may be decreased by the delay resulting from the hand off. In addition, there is the risk of the customer not being filled at all, leaving him unhedged.

Another example occurs when all the contract months in a commodity are limit up and a customer desires to buy a certain quantity, regardless of month. If the floor broker is required to hand off the customer's order after seeing a month begin to trade, the broker's customer runs the unnecessary risk of missing the offers available. Moreover, in a locked-limit situation such as this, it is quite likely that a broker could encounter some difficulty in attempting to hand off such an order.

For the foregoing reasons the Commission is amending its interpretive statement on the types of discretionary orders that a floor broker may execute under § 155.2(c). The Commission believes it is not inconsistent with § 155.2(c) for exchanges to adopt rules which allow floor brokers to execute orders where the broker has discretion as to contract month, as well as time and price, without handing off the order to another broker.

Issued in Washington, D.C. on March 10, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-7015 Filed 3-15-82; 8:45 am]

BILLING CODE 6351-01-M

[6] The floor broker must select the contract month *prior* to handing off the order for execution; otherwise, the floor broker would merely be giving the executing broker the same discretion that the regulation was designed to prohibit.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6389]

Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rules, rule amendments, and form, and rescission of rules and forms.

SUMMARY: The Commission announces the adoption of a new regulation governing certain offers and sales of securities without registration under the Securities Act of 1933 and a uniform notice of sales form to be used for all offerings under the regulation. The regulation replaces three exemptions and four forms, all of which are being rescinded. The new regulation is designed to simplify and clarify existing exemptions, to expand their availability, and to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors.

EFFECTIVE DATES: Regulation D, rule 215, Form D and amendments to rules 144 and 148 will be effective and Form 4(6) will be rescinded on April 15, 1982. Rules 146, 240, and 242, and Forms 146, 240, and 242 will be rescinded on June 30, 1982. For those offerings made in compliance with the terms of Rules 146, 240 and 242 which commence prior to the effective date of regulation D (April 15, 1982) and which continue past June 30, 1982, the Commission takes the administrative position that no registration is required under the Securities Act of 1933.

FOR FURTHER INFORMATION CONTACT: Prior to effective date, Paul A. Belvin (202) 272-2644, Office of Small Business Policy, and after effective date, David B. H. Martin, Jr. (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting regulation D (17 CFR 230.501-230.506), Rule 215 (17 CFR 230.215), Form D (17 CFR 239.500), and conforming amendments to rule 144 (17 CFR 230.144) and rule 148 (17 CFR 230.148) under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a *et seq.*, as amended). The Commission is rescinding Rules 146, 240 and 242 (17 CFR 230.146, 230.240, and 230.242) and Forms 146, 240, 242, and 4(6) (17 CFR 239.146, 239.240, 239.242, and 239.246).

The Commission published proposed regulation D for comment in Release No. 33-6339 (August 7, 1981) (46 FR 41791). Commentators generally supported the proposal. Many letters contained helpful analysis of and comment on specific sections in the proposed regulation. As adopted, regulation D is substantially similar to the proposal with certain changes made in response to comments received.

This release contains a general background of regulation D, an overview of its provisions, a discussion of the uniform federal-state exemptive framework, and a section-by-section synopsis of the final regulation.

I. Background

Regulation D is the product of the Commission's evaluation of the impact of its rules and regulations on the ability of small businesses to raise capital.[1] This study has revealed a particular concern that the registration requirements and the exemptive scheme of the Securities Act impose disproportionate restraints on small issuers. In response to this concern, the Commission has taken a number of actions, including a relaxation of certain aspects of regulation A (17 CFR 230.251-230.264), the adoption of Rule 242, and the introduction of Form S-18 (17 CFR 239.28), a simplified registration statement for certain first time issuers.[2]

Coincident with the Commission's small business program, Congress enacted the Small Business Investment Incentive Act of 1980 (the "Incentive Act") (94 Stat. 2275 (codified in scattered sections of 15 U.S.C.)). The Incentive Act included three changes to the Securities Act: the addition of an exemption in Section 4(6) for offers and sales solely to accredited investors,[3] the

[1] This evaluation began in April and May of 1978 when the Commission conducted 21 days of public hearings in six different cities for the purpose of determining the extent to which the burdens imposed on small businesses by the federal securities law could be alleviated consistent with the protection of investors. These hearings were recommended by the Advisory Committee on Corporate Disclosure. Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 511 (Comm. Print No. 95-29, 1977).

[2] For a summary of these and other actions, *see* Release No. 33-6339; Release No. 34-16866 (June 2, 1980) (45 FR 40145); and Release No. 33-6049 (April 3, 1979 (45 FR 21562).

[3] The Incentive Act also added Section 2(15) to the Securities Act which defined "accredited investor" as one of five enumerated institutional entities or any person who, on the basis of such factors as financial sophistication, net worth,

Continued

increase in the ceiling of Section 3(b) from $2,000,000 to $5,000,000, and the addition of Section 19(c) which, among other things, authorized "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."

As a result of the Commission's reevaluation of the impact that its rules and regulations have on small businesses and the provisions of the Incentive Act, the Commission undertook a general examination of the exemptive scheme under the Securities Act. In December 1980, it announced that it was considering the relationship among certain exemptions from the registration provisions of the Securities Act and the efficacy of those exemptions as they relate to the capital formation needs of small businesses.[4] The Commission requested comments on the interrelationships between Section 4(6) and rules 146 and 242, as well as on the adequacy of the ceiling limitations in exemptions under Section 3(b).

Commentary to the Commission criticized the complexity of the exemptive scheme as it relates to all issuers. Recommendations for solutions varied considerably. Based on certain recommendations and its own analysis, the Commission issued proposed regulation D, which provides exemptions for certain offerings by small and other businesses.[5]

The Commission received 88 letters of comment on proposed regulation D.[6] Commentators generally supported adoption of the regulation but offered detailed and constructive suggestions as to specific provisions in the rules.[7]

II. Discussion

A. Overview

Regulation D is a series of six rules, designated rules 501–506, that establishes three exemptions from the registration requirements of the Securities Act and replaces exemptions that currently exist under rules 146, 240, and 242. The regulation is designed to simplify existing rules and regulations, to eliminate any unnecessary restrictions that those rules and regulations place on issuers, particularly small businesses, and to achieve uniformity between state and federal exemptions in order to facilitate capital formation consistent with the protection of investors.

Rules 501–503 set forth definitions, terms, and conditions that apply generally throughout the regulation. The exemptions of regulation D are contained in rules 504–506. Rules 504 and 505 replace rules 240 and 242, respectively, and provide exemptions from registration under Section 3(b) of the Securities Act. Rule 506 succeeds rule 146 and relates to transactions that are deemed to be exempt from registration under Section 4(2) of the Securities Act.

Rule 504 generally expands rule 240 by increasing the amount of securities sold in a 12 month period from $100,000 to $500,000, eliminating the ceiling on the number of investors, and removing the prohibition on payment of commissions or similar remuneration. Rule 504 also removes restrictions on the manner of offering and on resale if an offering is conducted exclusively in states where it is registered and where a disclosure document is delivered under the applicable state law. Like rule 240, rule 504 does not prescribe specific disclosure requirements. Rule 504 is an effort by the Commission to set aside a clear and workable exemption for small offerings by small issuers to be regulated by state "Blue Sky" requirements and to be subject to federal antifraud provisions and civil liability provisions such as section 12(2). Therefore, the exemption is not available to issuers that are subject to the reporting obligations of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) or are investment companies as defined under the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–1 *et seq.).*

Rule 505 replaces rule 242. Its offering limit is $5,000,000 in a 6-month period, an increase from the $2,000,000 in 6 months ceiling in rule 242. Like its predecessor, rule 505 permits sales to 35 purchasers that are not accredited investors and to an unlimited number of accredited investors. However, the class of accredited investors has now been expanded. The exemption is available to all non-investment company issuers,[8] an expansion of the restriction in rule 242 that limited the exemption's availability to certain corporate entities. An issuer under rule 505 may not use any general solicitation or general advertising. The informational requirements under rule 505 are substantially similar to those in rule 242.

Rule 506 takes the place of rule 146. As under its predecessor, rule 506 is available to all issuers for offerings sold to not more than 35 purchasers. Accredited investors, however, do not count toward that limit. Rule 506 requires an issuer to make a subjective determination that each purchaser meets certain sophistication standards, a provision that narrows a similar requirement as to all offerees under rule 146. The new exemption retains the concept of the purchaser representative so that unsophisticated purchasers may participate in the offering if a purchaser representative is present. Like rule 146, rule 506 prohibits any general solicitation or general advertising.

B. Uniform Federal-State Limited Offering Exemptions

In conjunction with the proposal and adoption of regulation D, the Commission, through its Division of Corporation Finance, has coordinated with the North American Securities Administrators Association ("NASAA"),[9] through its Subcommittee on Small Business Financing ("NASAA Subcommittee"), under the authorization of Section 19(c)(3) of the Securities Act. The objective of this process has been to develop a basic framework of limited offering exemptions that can apply uniformly at the federal and state levels. Regulation D is intended to be the principal element of this framework. Under rule 504, offerings below $500,000 by a non-reporting company will not be required to be registered at the federal level. Moreover, if such offerings are registered in states requiring the delivery of a disclosure document, the manner of offering limitations and the restrictions on resale will not apply. Because of the small amount of the offering and the likelihood that sales will occur in a limited geographic area, the Commission and NASAA believe that greater reliance on state securities laws is appropriate. Rules 505 and 506, and applicable definitions, terms and

knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

The "accredited investor" concept had originally appeared in rule 242. *See* Release No. 33–6180 (January 17, 1980) (45 FR 6362); Release No. 33–6121 (September 11, 1979) (44 FR 54258).

[4] Release No. 33–6274 (December 23, 1980) (46 FR 2631).

[5] Release No. 33–6339 (August 7, 1981).

[6] These letters are available for inspection and copying in public File No. S7–891. A summary of the comments, prepared by the staff of the Commission's Division of Corporation Finance, has been placed in the public file.

[7] For additional and more detailed background information on Regulation D, *see* Release No. 33–6339 (August 7, 1981); Release No. 33–6274 (December 23, 1980).

[8] Like rule 242, rule 505 is not available to issuers that are subject to the disqualifications of regulation A.

[9] NASAA is a voluntary organization composed of securities regulatory agencies of 49 states, the Commonwealth of Puerto Rico, and Guam, as well as Mexico and 13 provinces of Canada.

conditions in rules 501–503, are intended to be uniform federal-state exemptions.

In October 1981, NASAA formally adopted a uniform limited offering exemption as an official policy guideline.[10] This exemption, which had two alternatives, was based on proposed Rule 505 of regulation D but differed from that provision in certain respects. Subsequent to the endorsement of the uniform exemption and considering the public comment received, the NASAA Subcommittee and the Division of Corporation Finance coordinated to minimize differences in the NASAA policy guideline and regulation D. The Commission understands that, following its adoption of regulation D, the NASAA Subcommittee will recommend adoption by NASAA of modifications to its uniform limited offering exemption to provide for a uniform exemptive system. This system will endorse rule 505 with certain additional terms as one option, and rules 505 and 506 with no changes as a second option.

The additional terms that NASAA is expected to consider involve the following: (1) Restriction on transaction related remuneration; (2) Disqualification of issuers and other persons associated with offerings on the basis of state administrative orders or judgments; (3) Qualification of investors based on the suitability of the investment; and (4) Requirements for filing of the notices of sales.

The Commission and NASAA do not believe that these additional terms detract from the goal of increased federal-state uniformity. Because of differences between federal and state securities regulation, complete uniformity may not be an attainable objective. Certain additional terms, for instance, relate to valid state interests of jurisdiction which are not appropriately addressed in a federal regulation. Similarly, certain additional terms relate to the mechanics of regulating limited offering exemptions at the state level which cannot be included effectively in a federal rule.

The Commission commends NASAA and the members of the NASAA Subcommittee for their cooperation and effort in the development of regulation D and anticipates continued coordination to achieve a uniform system of federal-state limited offering exemptions that facilitates capital formation consistent with the protection of investors.

[10] An official policy guideline of NASAA represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations, or otherwise bind the legislatures or administrative agencies of its members.

III. Synopsis

The following section-by-section discussion of the provisions of regulation D, the significant commentary on the proposals, and the revisions made to the proposed regulation is included to assist in understanding the regulation as adopted. Attention is directed to the text of regulation D for a more complete understanding. Attention is also directed to the chart following the synopsis which compares the provisions of regulation D exemptions to those of predecessor exemptions.

A. Preliminary Notes

Regulation D contains six preliminary notes. The first preliminary note reminds issuers that regulation D offerings, although exempt from Section 5 of the Securities Act, are not exempt from antifraud or civil liability provisions of the federal securities laws. The note also reminds issuers conducting regulation D offerings of their obligation to furnish whatever material information may be needed to make the required disclosure not misleading.

Note 2 underscores an issuer's obligation to comply with applicable state law and highlights certain areas of anticipated differences between regulation D at the federal and state levels. (*See* section II.B. of this release for further discussion of these differences.)

Note 3 makes clear that reliance on any particular exemption in regulation D does not act as an election. An issuer may always claim the availability of any other applicable exemption. Several commentators believed this note should address specifically the availability of an exemption under section 4(2) of the Securities Act. The Commission has reworded the note by including language that appeared in proposed rule 506(a) and clarified the specific availability of section 4(2).

The fourth note specifies that regulation D is available only to the issuer of the securities and not to its affiliates or others for resales of the issuer's securities. The note further provides that regulation D exemptions are only transactional. Several commentators pointed out that the proposed note in some respects duplicated rule 502(d), the provision governing resale limitations. That redundancy has been eliminated.

Preliminary Note 5, which confirms the availability of regulation D for business combinations, clarifies a question raised by commentators.

The sixth note provides that the regulation is not available for use in a plan or scheme to evade the registration requirements of the Securities Act.

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

Rule 501 sets forth, alphabetically, definitions that apply to the entire regulation. The definitions generally represent distillations of concepts in rules 146, 240, and 242. The definition of "accredited investor," however, is an expansion of the term "accredited person" in rule 242.

The Commission has deleted two definitions, "predecessor" and "securities of the issuer," that appeared in the proposed regulation. The effect of these definitions was principally to expand the measurement of proceeds which would be included in the aggregate offering price of an offering under rules 504 and 505. The expansion would have required an issuer to add to the aggregate offering price of its regulation D offering the proceeds of certain offerings by predecessors and affiliates. As commentators observed, this would thus have included, by virtue of the "predecessor" definition, sales of securities by a substantially larger issuer from which the regulation D issuer had acquired the major portion of its assets. Further, by virtue of the "affiliate" definition, sales by limited partnerships with the same general partners as the Regulation D issuer would have been aggregated. Although there may be instances where such results would be appropriate, the Commission has determined to address those cases through general principles of integration, rather than through specific but overly inclusive rules in the regulation. Predecessor and affiliate relationships would be relevant to any consideration of whether prior offerings should be integrated with a proposed offering under regulation D.

1. *Accredited investor.* In proposing the definition of accredited investor,[11] the Commission specifically requested comments regarding three of the seven categories included in the definition. Although commentators generally supported the concept, many suggested changes to particular aspects of the definition.

The introductory language to the proposed definition provided that investors were accredited only if "the

[11] The Commission has adopted a uniform definition applicable to section 4(6) and regulation D. In this regard, the definition in rule 501(a) is identical to the combined provisions of section 2(15) and rule 215 thereunder. The definition of accredited investor contained in section 2(15) of the Securities Act and rule 215 has been reprinted in Regulation D for ease of reference.

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" that the investors came within one of the categories in the definition. It was pointed out that this formulation appeared to bar from the definition someone who actually was accredited but in whom the issuer did not have the requisite belief. The regulation as adopted permits accreditation for investors who are qualified in fact.

The following subsections review the eight categories of accredited investors in rule 501(a).

a. Rule 501(a)(1)—Institutional Investors. Rule 501(a)(1) repeats the listing of institutional investors included in section 2(15)(i) of the Securities Act. One such investor is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") (codified in scattered sections of 26, 29 U.S.C.), the investment decisions for which are made by a bank, insurance company, or registered investment adviser. The Commission recognizes, and several commentators noted, that many plans have internalized the function of the plan fiduciary and thus could not qualify under the proposed category. For this reason the Commission believes it is appropriate to extend accredited investor status to any ERISA plan with total assets in excess of $5,000,000.

b. Rule 501(a)(2)—Private Business Development Companies. This category applies to private business development companies as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (the "Advisers Act") (15 U.S.C. 80b–1 *et seq.*). As proposed, the category referred to sections 55(a)(1) through (3) and 2(a)(47) of the Investment Company Act. The proposal was intended to include business development companies that had not made an election under section 2(a)(48)(C) of the Investment Company Act. Several commentators noted, however, that the intent of the category could be more accurately accomplished by referring to the definition of private business development company in section 202(a)(22) of the Advisers Act. Although the new reference expands the class of private business development companies that may be qualified as accredited investors, it still delimits the class by the obligation of its members to provide "significant managerial assistance" as defined in Section 2(a)(47) of the Investment Company Act.[12]

[12] Section 202(a)(22) of the Advisers Act refers to Section 2(a)(48) of the Investment Company Act for the core of its meaning. Section 2(a)(48) defines a business development company as a company that, among other things, "makes available significant managerial assistance," a phrase that is defined in Section 2(a)(47) of the Investment Company Act.

c. Rule 501(a)(3)—Tax Exempt Organizations. Proposed rule 501(a)(3) created a category of accredited investor for college or university endowment funds with assets in excess of $25 million. Upon further consideration and based on commentary the Commission has determined that this category can be expanded to all organizations that are described as exempt organizations in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)). Additionally, the Commission has lowered the asset level to $5 million.

d. Rule 501(a)(4)—Directors, Executive Officers and General Partners. Rule 501(a)(4) provides that certain insiders of the issuer are accredited investors. As proposed, the category pertained only to directors and executive officers. A number of comment letters recommended that the provision be modifed to cover general partners of limited partnerships. The category thus has been revised to include general partners of issuers, as well as directors, executive officers and general partners of those general partners.

e. Rule 501(a)(5)—$150,000 Purchasers. This category represents the combination of a similar category in Rule 242(a)(1)(ii), an analogous provision in rule 146(g)(2)(i)(d), and the recommendations of many commentators. Under this provision a person is an accredited investor upon the purchase of at least $150,000 of the securities if the total purchase price does not exceed 20 percent of the investor's net worth at the time of sale. For natural persons, the joint net worth of the investor and the investor's spouse may be used in measuring the ratio of purchase to net worth. The purchase may be made by one or a combination of four specified methods: cash; marketable securities; an unconditional obligation to pay cash or marketable securities within five years of sale; or a cancellation of indebtedness.

Four significant changes were made to the proposed category: an increase of the purchase amount from $100,000 to $150,000; the addition of a 20 percent of net worth limitation on the total purchase price; the addition of marketable securities as a means of payment; and a modification of the installment provision to allow payments over five years with no specified collateral.

Most commentary focused on the proposed installment provision which required an unconditional obligation to pay within two years of the first issuance of securities secured by a letter of credit.[13] Commentators pointed out that two years was too short a period for the economics of many business ventures, especially the tax shelter transactions that frequently utilize limited offering exemptions, *e.g.*, real estate and oil and gas partnerships. Additionally, some commentators noted that the two year limitation would have put the investor in a weaker bargaining position if the venture did not proceed satisfactorily. Finally, commentators also viewed the requirement that the installment obligation be collateralized with a letter of credit as an administrative and financial burden for an investor.

The basic premise of proposed Rule 501(a)(5) was that a person capable of investing a large amount of capital (i.e. $100,000 or more) in an offering ought to be considered an accredited investor. However, the Commission noted that, where the purchase price was spread over an extended period of time, the present value of the investment may have been reduced to a level where the investor was no longer investing sufficient amounts to merit accredited investor status.

In addressing the concerns of commentators, the Commission revised the rule to permit a payment period of five years with no specified collateral. In view of the extension of the installment period and in order to ensure that the investor in this category is capable of investing a sufficiently large amount of capital to warrant accredited investor status, the Commission also has increased the purchase price to $150,000 and revised the rule to provide that the total purchase price be limited to no more than 20 percent of the investor's net worth. The latter restriction does not, of course, require a commitment of 20 percent of the investor's net worth in the offering.

Lastly, in response to certain comments, the Commission has supplemented the available methods of payment with securities that have a readily available market quotation.

[13] Commentators questioned measuring the installment time period from "the first issuance of the securities." The Commission has changed the point from which the installment period is to be measured to "the sale of the securities to the purchaser." A sale takes place when the purchaser enters into a commitment to pay for the securities. Thus, in the case of a limited partnership, the sale takes place upon the issuer's acceptance of the subscription agreement or similar commitment by the investor.

Various aspects of this category may be demonstrated by the following examples. An investor whose net worth at the time of sale is $750,000 and who purchases $150,000 of the offering in cash on the day of sale is accredited. The same investor maintains that status if his payment is spread out over five years, so long as on the date of purchase he enters into an unconditional obligation to pay within that period. If, however, that investor agrees to purchase $200,000 of securities in installments, $150,000 to be paid on the date of sale and the balance in four years, he will not qualify under this category of accredited investor because his total purchase of $200,000 is more than 20 percent of his $750,000 net worth. A final case involves the investor with a net worth of $900,000 who agrees to purchase $180,000 of securities over six years, the first $150,000 of that purchase coming in the first five years. That investor is accredited because he is purchasing at least $150,000 within a five-year period and because the total purchase of $180,000 does not exceed 20 percent of his net worth.

f. Rule 501(a)(6)—$1,000,000 Net Worth Test. This category extends accredited investor status to any natural person whose net worth at the time of purchase is $1,000,000. Net worth may be either the individual worth of the investor or the joint net worth of the investor and the investor's spouse.[14] The Commission proposed a level of $750,000 for this test. Some commentators, however, recommended excluding certain assets such as principal residences and automobiles from the computation of net worth. For simplicity, the Commission has determined that it is appropriate to increase the level to $1,000,000 without exclusions.

g. Rule 501(a)(7)—$200,000 Income Test. A natural person who has an income in excess of $200,000 in each of the last two years and who reasonably expects an income in excess of $200,000 in the current year is an accredited investor.

As proposed, this category was based on individual adjusted gross income of $100,000 as reported for federal income tax purposes in the most recent tax year. Commentators objected to that formulation for three reasons.

First, reliance on the federal income tax return presented several problems. Foreign investors may not be required to file or to report all income on the United States tax return. Also, individual adjusted gross income may not be a useful figure for an investor who files a joint tax return or who resides in a community property state. Second, in measuring income only in the most recent tax year, the category included investors who had a nonrecurring peak in income for that year. Thirdly, commentators expressed concern about the general concept of adjusted gross income which does not include certain deductions or exempt income and may thus exclude from accredited investor status many sophisticated investors who can reduce their gross income below $100,000 through legitimate tax planning measures.

The category as adopted is intended to address these concerns. The test is no longer keyed to the federal income tax return. Further, the requisite income level must have been sustained over the two most recent years and the investor must reasonably expect continuation of an adequate level in the year of the investment.[15] Also, the term "adjusted gross income" has been changed to "income". Use of the term "income" will permit the inclusion of certain deductions and additional items of income which, as noted above, were excluded in the proposed concept of adjusted gross income. Accordingly, the appropriate income level has been raised to $200,000.

The rule as adopted does not define the term "income". Rather than adopting a definition, the Commission has determined to utilize a flexible approach, thereby avoiding the issues raised by inclusion in the rule of federal tax law concepts. However, the Commission is concerned that the decision not to define "income" may be misconstrued. The determination of what is and is not "income" is important in establishing the type of investor intended to be included in this category of accredited investor. Note that the term "income", and not "revenues", has been selected as the appropriate term. For example, the revenues of a sole proprietorship would not give an accurate picture of the income of a self-employed person without deducting the operating expenses of the proprietorship. On the other hand, an employee's salary could be a useful figure in determining whether the employee meets the requisite income level provided the employee has not incurred significant expenses in connection with earning that salary.

One possible method of computing income is as follows: individual adjusted gross income (assuming that had been reported on a federal tax return) increased by any deduction for long term capital gains under section 1202 of the Internal Revenue Code (the "Code"), any deduction for depletion under section 611 *et seq.* of the Code, any exclusion for interest under section 103 of the Code, and any losses of a partnership allocated to the individual limited partner as reported on Schedule E of Form 1040 (or any successor report).

h. Rule 501(a)(8)—Entities Made Up of Certain Accredited Investors. The proposed definition of accredited investor did not take into account an entity owned entirely by accredited investors. Rule 501(a)(8) of the final regulation extends accredited investor status to entities in which all the equity owners are accredited investors under rule 501(a) (1), (2), (3), (4), (6), or (7).

2. *Affiliate.* The definition of affiliate in rule 501(b) is the same as that contained in rule 405 of regulation C (17 CFR 230.405).

3. *Agggregate offering price.* Rule 501(c) defines the method for calculating the aggregate offering price. With the exception of certain changes to add clarity, the substance of this provision is similar to that in proposed rule 501.

4. *Business combination.* The definition of business combination in rule 501(d) has undergone only technical revision.

5. *Calculation of number of purchasers.* Rule 501(e) sets forth principles that govern the calculation of the number of purchasers in offerings under rules 505 and 506. These principles represent a consolidation of those in rule 146(g)(2)(i) and rule 242(e)(2) with some modifications. Only technical changes were made to the proposal.[16]

6. *Executive officer.* The definition of executive officer in rule 501(f) has been modified to conform with the definition of that term set forth in rule 405 of Regulation C.

7. *Issuer.* The term "issuer", as set forth in rule 501(g), has been revised to conform with the terminology in the Federal Bankruptcy Code (11 U.S.C. 101 *et seq.).*

8. *Purchaser representative.* In response to comments, the definition of purchaser representative in rule 501(h)

[14] Commentators noted that the proposed rule, which limited net worth to that of the individual investor, presented numerous problems for investors in community property states or for investors with assets held in joint name with a spouse. Recognizing these problems, the Commission has modified the net worth test to include joint net worth.

[15] For an investor purchasing securities in June 1982, income in calendar years 1980 and 1981 and reasonably expected income in 1982 would be used in determining accreditation under this category.

[16] The Commission is proposing to exclude non-U.S. citizens or residents from the calculation of number of purchasers. *See* Release No. 33-6360 (November 20, 1981) (46 FR 58511).

has been revised in three respects. First, the introductory language to the paragraph has been reformulated. As adopted, the definition includes any person who satisfies the conditions of the term in fact, as well as any person the issuer reasonably believes falls within the category. A second change incorporated the categories set forth in rule 501(e)(1) (ii) and (iii) into subparagraphs (ii) and (iii). Thirdly, paragraph (2) was revised to permit the purchaser representative to make the requisite evaluation of the prospective investment "with the purchaser."

C. Rule 502—General Conditions To Be Met

Rule 502 sets forth general conditions that relate to all offerings under Rules 504 through 506. These cover guidelines for determining whether separate offers and sales constitute part of the same offering under principles of integration, requirements as to specific disclosure requirements in regulation D offerings, and limitations on the manner of conducting the offering and on the resale of securities acquired in the offering.

As proposed, Rule 502 contained a provision developed in conjunction with the NASAA Subcommittee that prohibited the payment of commissions or similar remuneration to other than registered broker-dealers. The Commission received significant adverse comment on the provision and upon reconsideration has deleted it from the final regulation. As indicated in section II.B. above, the Commission believes, based on variations in state law regarding registration of broker-dealers and other persons receiving transaction related remuneration, that the operation of state registration provision in the federal regulation would create significant complications. Because of valid state jurisdictional concerns, it is likely that NASAA will recommend the addition of a provision similar to proposed rule 502(e) in the uniform state exemptions. This is highlighted in Preliminary Note 2.

1. *Integration.* Rule 502(a) provides that all sales that are part of the same regulation D offering must be integrated.[17] The rule provides a safe harbor for all offers and sales that take place at least six months before the start of or six months after the termination of the regulation D offering, so long as there are no offers and sales, excluding those to employee benefit plans, of the same securities within either of these six-month periods.[18]

Along with several technical revisions, the Commission changed the word "issue" to "offering" throughout the provision. This change makes the language of the rule consistent with the principle of integration.[19]

2. *Information Requirements.* Rule 502(b) provides when and what type of disclosure must be furnished in regulation D offerings. If an issuer sells securities under Rule 504 or only to accredited investors, the regulation D does not mandate any specific disclosure.[20] If securities are sold under rule 505 or 506 to any investors that are not accredited, then rule 502(b)(1)(ii) requires delivery of the information specified in rule 502(b)(2) to all purchasers. The type of information to be furnished varies depending on the size of the offering and the nature of the issuer.

As proposed, rule 502(b)(1)(ii) contained a special rule for disclosure when 60 percent or more of the total offering was purchased by certain institutional accredited investors. Under the 60 percent test, an issuer was not required to furnish disclosure documents unless specifically asked by an investor that was not accredited. The concept of the test was that the accredited investors, negotiating in their own interest, could be relied upon to assure the fairness of the transaction to remaining investors and that for this reason a disclosure document need not be mandated.

The Commission specifically requested comments on the 60 percent test and a number of commentators responded. Opinions varied but a majority of those commenting did not believe the test achieved any practical results. The test put the issuer in the position of having to speculate up until an offering was complete as to whether the 60 percent ratio would be met or as to whether an investor would make a demand for certain disclosure. According to commentators, an issuer faced with that uncertainty would prepare a full disclosure package for use from the beginning of the offering, thus negating any possible savings the rule may have provided. Finally, some commentators questioned whether the presence of institutional accredited investors would reduce the risk or the need for disclosure for other investors. Having considered these comments, the Commission has decided not to adopt the 60 percent test.

The specific disclosure requirements are as follows.

a. Non-reporting companies. Disclosure requirements for companies that are not subject to the reporting obligations of the Exchange Act are set forth in rule 502(b)(2)(i). These requirements are keyed to the size of the offering.

In offerings up to $5,000,000 an issuer must provide the same kind of information as required in Part I of Form S–18, or, for an issuer that is not qualified to use Form S–18, the same kind of information as required in Part I of a registration form available to the issuer.[21] The issuer need only provide two years of financial statements and only the most recent year need be audited. For issuers that are not limited partnerships, only a balance sheet dated within 120 days of the offering must be audited if obtaining an audit of the other financial statements would constitute an unreasonable effort or expense. Limited partnerships may furnish tax basis financial statements if the basic requirements are an unreasonable effort or expense.[22]

For offerings over $5,000,000 issuers must furnish the same kind of information as specified in Part I of an available form of registration. Where the audited financials cannot be obtained without unreasonable effort or expense, the issuer is given options similar to those in offerings up to $5,000,000.

[17] For a general discussion of the concept of integration, *see* Release No. 33–4552 (November 6, 1962) [27 FR 11316].

[18] As proposed, this exclusion applied to employee benefit plans meeting the requirements of rule 16b–3 under the Exchange Act. That reference has been changed to the definition of employee benefit plan in rule 405 of regulation C.

[19] The Commission is proposing to expand the note to rule 502(a) to state that exempt offerings will not be integrated with certain foreign offerings. *See* Release No. 33–6360 (November 20, 1981).

[20] In response to the Commission's request, several commentators addressed the question of whether, in offerings only to accredited investors, issuers should be required to deliver specific disclosure documents to accredited investors who are natural persons. Commentary was divided on the question. The Commission has determined that it is neither necessary nor appropriate to make distinctions of this type within the class of accredited investor.

[21] Currently, Form S–18 is available for an offering up to $5,000,000 but not for an issuer that, among other things, is subject to Exchange Act reporting obligations, is offering limited partnership interests, is an investment company, or is engaging or will engage in oil and gas related operations. The Commission is proposing to delete the limited partnership and oil and gas restrictions. *See* Release No. 33–6388 (March 3, 1982). *See also* Release No. 33–6360 (November 20, 1981) in which the Commission is proposing specific disclosure requirements for non-North American foreign private issuers.

[22] The option of tax basis financials for limited partnerships is an addition in response to comments on the proposed rule that criticized the expense to some limited partnerships of having financial statements prepared in accordance with generally accepted accounting principles.

In the proposed regulation, the Commission set forth another category of offerings, those up to $1,500,000, in which disclosure requirements related to regulation A. Upon review, this category appeared to complicate the structure of tiered disclosure requirements with little significant benefit. Accordingly, that category was combined with offerings from $1,500,000 to $5,000,000.

b. *Reporting companies.* Companies that are subject to Exchange Act reporting obligations must furnish the same kind of disclosure regardless of the size of the offering. These issuers, however, have an option as to the form that this disclosure may take. Under rule 502(b)(2)(ii)(A), a reporting company may provide its most recent annual report to shareholders, assuming it is in accordance with rule 14a–3 or 14c–3 (17 CFR 240.14a–3 or 240.14c–3) under the Exchange Act, the definitive proxy statement filed in connection with that annual report, and, if requested in writing, the most recent Form 10–K (17 CFR 249.310). Alternatively, those issuers may elect under rule 502(b)(2)(ii)(B) to provide the information contained in the most recent of its Form 10–K or a Form S–1 (17 CFR 239.11) registration statement under the Securities Act or a Form 10 (17 CFR 249.10) registration statement under the Exchange Act. Although the requirement under subparagraph (B) refers to specific forms, it does not mandate delivery of the actual reference documents. An issuer, for instance, may choose to prepare and deliver a separate document that contains the necessary information.

Regardless of the issuer's choice of disclosure in subparagraph (A) or (B), rule 502(b)(2)(ii)(C) requires the basic information to be supplemented by information contained in certain Exchange Act reports filed after the distribution or filing of the report or registration statement in question. Further, the issuer must provide certain information regarding the offering and any material changes in the issuer's affairs that are not disclosed in the basic documents.

The disclosure requirements for reporting companies represent a modification of the proposal which would have required an issuer to furnish basic disclosure in the form of its annual report to shareholders along with the information contained in the associated definitive proxy statement. The only exception to the proposal applied to an issuer that did not have an annual report meeting the requirements of rule 14a–3 or 14c–3. That issuer could provide the information contained in its Form 10–K or a registration statement. Commentators believed it was more appropriate to permit issuers the option of preparing a current composite document for the exempt offering. The Commission has reformulated the information requirements for reporting companies to address those concerns.

c. Other information requirements. The balance of rule 502(b)(2) provides for the treatment of exhibits, the right of purchasers that are not accredited to receive information which was furnished to accredited investors, and, in offerings involving nonaccredited investors, the right of all purchasers to ask questions of the issuer concerning the offering, and a specific obligation by the issuer to disclose all material differences in terms or arrangements as between security holders in a business combination or exchange offer. These provisions have undergone some technical revision and have been reformulated to accommodate the deletion of the 60 percent provision in rule 502(b)(1)(ii).

3. *Manner of offering.* Rule 502(c) prohibits the use of general solicitation or general advertising in connection with regulation D offerings, except in certain cases under rule 504. The prohibition follows a similar restriction in rule 146(c), except that both as proposed and as adopted the limitation in regulation D alters those aspects of rule 146(c) that related to qualified offerees.[23]

4. *Limitations on resale.* Securities acquired in a regulation D offering, with the exception of certain offerings under rule 504, have the status of securities acquired in a transaction under section 4(2) of the Securities Act.[24] As further provided in rule 502(d), the issuer shall exercise reasonable care to assure that purchasers of securities are not underwriters, which reasonable care will include certain inquiry as to investment purpose, disclosure of resale limitations and placement of a legend on the certificate. Apart from technical drafting changes, the rule is similar to the proposal.

D. Rule 503—Filings of Notice of Sales

The Commission is adopting a uniform notice of sales form for use in offerings under both regulation D and section 4(6) of the Securities Act. The form is an adaptation of Form 242 and Form 4(6) to the regulation D context.[25] As with the predecessor forms, issuers will furnish information on Form D mainly by checking appropriate boxes. The form requires an indication of the exemptions being claimed.

Rule 503 sets forth the filing requirements for Form D. The notice is due 15 days [26] after the first sale of securities in an offering under regulation D.[27] Subsequent notices are due every six months after first sale and 30 days after the last sale. One copy of each notice must be manually signed by a person duly authorized by the issuer.[28]

Rule503(d) requires an undertaking in Form D to furnish the staff, upon its written request, with the information provided to purchasers that are not accredited in a rule 505 offering. This is similar to the undertaking required by rule 242(h)(2). In the proposed regulation, that undertaking was broader and covered similar requests by state authorities. The Commission has decided, however, not to include the state undertaking in the final regulation. Many states may elect to require such an undertaking and the Commission appreciates the interests that such an undertaking serves. The Commission, nevertheless, was concerned about the effects of including the state feature in the federal rule since this would have raised a question as to the meaning of the undertaking in states that had not adopted regulation D.

E. Rule 504—Exemption for Offers and Sales Not Exceeding $500,000

Rule 504, which replaces rule 240, provides an exemption under section 3(b) of the Securities Act for certain offers and sales not exceeding an aggregate offering price of $500,000. Rule 240 permits sales up to $100,000 to 100 investors. Proceeds from securities sold within the preceding 12 months in all transactions exempt under section

[23] Several commentators were concerned with the proposed wording of rule 502(c)(2), believing that its use of the word "mailing" was an absolute prohibition on mail as a means of inviting persons to seminars. The Commission has revised the language to eliminate that implication.

[24] Rule 144 and rule 148 are being amended to conform their definitions of "restricted securities" with regulation D.

[25] One change which has been made in response to the recommendation of commentators involves the listing of persons receiving commissions or similar remuneration. That requirement has been modified to permit the listing of firm names in certain cases.

[26] Notices under rule 146 are due at the time of first sale; those under rule 242 must be filed 10 days after first sale; and rule 240 notices are required 10 days after the close of the first month in which a sale is made. As proposed, notice under regulation D was due 30 days after first sale.

[27] In response to commentators, the Commission notes that generally the acceptance of subscription funds into an escrow account pending receipt of minimum subscriptions would trigger the filing requirements.

[28] As proposed, the signature was to have been by a duly authorized officer.

3(b) [29] or in violation of section 5(a) of the Securities Act must be included in computing the aggregate offering price under rule 504.[30] The exemption is not available to investment companies or issuers subject to Exchange Act reporting obligations. Commissions or similar transaction related remuneration may be paid.

As under rule 240, the exemption under rule 504 does not mandate specific disclosure requirements. However, the issuer remains subject to the antifraud and civil liability provisions of the Federal securities laws and must also comply with state requirements.

Offers and sales under rule 504 must be made in accordance with all the general terms and conditions in rules 501 through 503. However, if the entire offering is made exclusively in states that require registration and the delivery of a disclosure document, and if the offering is in compliance with those requirements, then the general limitations on the manner of offering and on resale will not apply.

With the exception of its format, which has been reorganized along with that of rules 505 and 506 for purposes of clarity, rule 504 is identical to the proposal. Most commentators supported the exemption. A few opposed the bar to reporting companies while others recommended retaining the exclusions from aggregation in rule 240. In view of the overall support for the exemption, however, and noting the emphasis in this rule on state regulation and the increase in aggregate offering price from rule 240, the Commission has concluded that the exemption's parameters are appropriate.

F. Rule 505—Exemption for Offers and Sales Not Exceeding $5,000,000

Rule 505 replaces rule 242. The rule provides an exemption under section 3(b) of the Securities Act for offers and sales to no more than 35 purchasers that are not accredited where the aggregate offering price over 12 months does not exceed $5,000,000. As with rule 504, the aggregate offering price includes proceeds from offers and sales under section 3(b) or in violation of section 5(a) of the Securities Act.[31] Rule 242 permits up to $2,000,000 in sales, aggregated over six months, to no more than 35 purchasers that are not accredited.[32]

Rule 505 is available to any issuer that is not an investment company. This is an expansion of the availability of rule 242 which follows the eligibility criteria of Form S–18 and is currently not available to non-corporate issuers, to foreign issuers, and to issuers engaged in oil and gas activities. As proposed, rule 505 barred from its use issuers that had been subject to Exchange Act reporting obligations for more than 36 months preceding the offering. Questioning that limitation, commentators observed that issuers that had been reporting for 36 months were not, in the context of a rule 505 offering, necessarily more seasoned or substantial than non-reporting companies. The limitation, thus, did not presumptively work in favor of small businesses. Accordingly, the Commission has not retained any restrictions on the use of rule 505 based on Exchange Act reporting obligations.

Finally, rule 505 is not available to issuers that are subject to any of the disqualification provisions contained in rule 252 (c), (d), (e) or (f) of regulation A. The Commission has deleted proposed state related disabilities based on a false filing with a state, on a felony conviction for fraud or deceit, and on a state administrative cease and desist order for certain state securities violations. As discussed in section II.B. of this release, these disqualifications are of valid concern to states. Their inclusion in the federal exemption, however, presented significant complications based on different degrees of state administrative actions and procedures required for review of waiver requests.

G. Rule 506—Exemption for Offers and Sales Without Regard to Dollar Amount

Rule 506 relates to transactions that are deemed to be exempt under section 4(2) of the Securities Act. It modifies and replaces rule 146. Like its predecessor, rule 506 exempts offers and sales to no more than 35 purchasers. Whereas rule 146 excludes certain purchasers from the count, rule 506 excludes accredited investors in computing the number of purchasers. More significantly, rule 506 modifies the offeree qualification principles of rule 146 in two ways. First, rule 506 requires that only purchasers meet the sophistication standard. Second, the rule eliminates the economic risk test. Commentators endorsed both modifications.

The Commission has redrafted rule 506 so that it parallels the form of rules 504 and 505. In the process, two proposed provisions have been eliminated. One, regarding business combinations in proposed rule 506(b)(2), has been removed on the ground that, in view of other general rules in the regulation, its principle does not require specific recitation. Another, regarding purchaser representatives in proposed rule 506(c), has been eliminated because of overlapping coverage in the definition of purchaser representative in rule 501(h)(4).[33]

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[29] Exemptions under section 3(b) include rule 240, Rule 242, regulation A, and rules 504 and 505 of regulation D. The proposed rule listed all but rules 240 and 242. The final version, by referring generally to section 3(b), is more concise. Further, it covers the transition period where issuers may have offerings under both regulation D and its predecessor exemptions.

[30] Aggregation under rule 240 requires inclusion of all sales made without registration but permits exclusion from that calculation of certain non-convertible notes or similar evidences of indebtedness issued to certain institutions and securities sold to promoters, directors, executive officers and full time employees.

[31] Based on its experience with rule 242, the Commission is aware that in computing the aggregate offering price issuers frequently misunderstand the interaction of the concepts of aggregation and integration as applicable under rules 504(b)(2)(i) and 505(b)(2)(i). Aggregation is the principle by which an issuer determines the dollar worth of exempt sales available directly under section 3(b) of the Securities Act. Integration is a principle under which an issuer determines overall characteristics of its offering. The following examples illustrate the application of these concepts. An issuer that has conducted an offering under rule 505 in May 1982 must aggregate the proceeds from that offering with the proceeds of a rule 505 offering conducted in December 1982. If the May offering had been under Rule 506, however, it would not need to be aggregated with the December offering. In either case, the May offering should be exempt from principles of integration by virtue of the safe harbor provision in rule 502(a). If a rule 506 offering had been conducted in July 1982, the integration safe harbor would not be available as to a subsequent rule 505 offering in December. Although the proceeds from the July 506 offering would not be added to the December 505 aggregate offering price under aggregation principles, they would have to be included if the two offerings could be integrated. Assuming the two offerings were integrated, then the issuer would have to evaluate all characteristics of the combined transactions, e.g., number of investors, aggregate offering price, etc., when determining the availability of exemption.

[32] Rule 242 does not aggregate proceeds from securities sold in violation of section 5(a) or under regulation A pursuant to an employee plan defined in rule 16b–3 under the Exchange Act.

[33] Commentators expressed concern that this exemption was not clearly designated as a safe harbor rule under section 4(2) of the Securities Act. Such a connection is important, they noted, for purposes of exemption from Regulation T (12 CFR 220.1–220.8) of the Federal Reserve Board, exemption from the definition of "investment company" under section 3(c)(1) of the Investment Company Act, and exemption from registration under certain state laws. The final language of rule 506 responds to this concern. In addition, the Commission's Division of Corporation Finance has conferred with and has been assured by the staff of the Federal Reserve Board that transactions under rule 506 will be exempt from the operation of Regulation T. Finally, the Commission regards rule 506 transactions as non-public offerings for purposes of the definition of "investment company" in section 3(c)(1) of the Investment Company Act and as section 4 transactions for purposes of section 304(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77 aaa *et eq.*, as amended).

Comparative Chart of Securities Act Limited Offering Exemptions

Comparison Item	Rule 240 Rule 504	Rule 242 Rule 505	Rule 146 Rule 506	Section 4(6)
Aggregate Offering Price Limitation	$100,000 $500,000	$2,000,000 (6 mos.) $5,000,000 (12 mos.)	Unlimited Unlimited	$5,000,000
Number of Investors	100 (total shareholders) Unlimited	35 plus unlimited accredited	35 plus those purchasing in excess of $150,000	Unlimited accredited only
		35 plus unlimited accredited		
Investor Qualification	None required None required	Accredited or none required Accredited or none required	Offeree and purchaser must be sophisticated or wealthy (with representative) Purchaser must be sophisticated (alone or with representative) Accredited presumed to be qualified	Accredited
Commissions	Prohibited Permitted	Permitted Permitted		Permitted
Limitations on Manner of Offering	No general solicitation permitted No general solicitation unless registered in states that require delivery of a disclosure document.	No general solicitation permitted No general solicitation permitted		No general solicitation permitted
Limitations on Resale	Restricted Restricted unless registered in states that require delivery of a disclosure document	Restricted Restricted		Restricted
Issuer Qualifications	No companies having more than 100 shareholders at completion of offering No reporting or investment companies	No non-North American issuers, investment companies, oil and gas companies, or issuers disqualified under Regulation A No investment companies or issuers disqualified under Regulation A	None None	None
Notice of Sales	Form 240 required as a condition of rule except for first $100,000 under rule- 3 copies filed in Regional Office within 10 days after end of month in which sale made	Form 242 required as a condition of rule- 5 copies filed with Commission 10 days after first sale, every six months after first sale, 10 days after completion	Form 146 required as condition of rule- 3 copies filed in Regional Office at time of first sale, except for offerings below $50,000 in 12 months	Form 4(6) required as condition of exemption - 5 copies filed with Commission 10 days after first sale, every 6 months after first sale, 10 days after completion
	Form D required as a condition of exemption - 5 copies filed with Commission 15 days after first sale, every 6 months after first sale, 30 days after last sale			

Comparison Item	Rule 240 Rule 504	Rule 242 Rule 505	Rule 146 Rule 506	Section 4(6)
Information Requirements	No information specified No information specified	1. If purchased solely by accredited no information specified 2. If purchased by any non-accredited, must furnish (a)(non-reporting companies)information in Part I of Form S-18 with 1 year audited financials (b)(reporting companies)most recent annual report, def. proxy statement and recent periodic reports	Must furnish (unless offeree has access via economic bargaining power) 1. Below $1,500,000 - information may be limited to Part II, Form 1-A of Reg A 2. Other offerings (a)(non reporting) information in registration available to issuer - Unaudited financials if audit requirements unreasonable effort or expense (b)(reporting companies)recent Form S-1 or Form 10, def. proxy statement and periodic reports	No information specified No information specified

1. If purchased solely by accredited, no information specified
2. If purchased by non-accredited,
   a. non-reporting companies must furnish
   i. offerings up to $5,000,000-information in Part I of Form S-18 or available registration, 2 yr. financials, 1 year audited-if undue effort or expense, issuers other than limited partnerships only balance sheet as of 120 days before offering must be audited-if limited partnership and undue effort or expense, financials may be tax basis
   ii. offerings over $5,000,000-information in Part I of available registration-if undue effort or expense, issuers other than limited partnerships only balance sheet as of 120 days before offering must be audited-if limited partnership and undue effort or expense, financials may be tax basis
   b. reporting companies must furnish
   i. Rule 14a-3 annual report to shareholders, definitive proxy statement and 10-K, if requested, plus subsequent reports and other updating information or
   ii. information in most recent Form S-1 or Form 10 or Form 10-K plus subsequent reports and other updating information
   c. Issuers must make available prior to sale
   i. exhibits
   ii. written information given to accredited investors
   iii. opportunity to ask questions and receive answers

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IV. Effective Date and Operation of Regulation D

Regulation D, rule 215, Form D, and related amendments to rules 144 and 148 will be effective and Form 4(6) will be rescinded on April 15, 1982. Rules 146, 240, and 242 and Forms 146, 240, and 242 will be rescinded on June 30, 1982. For those offerings made in compliance with the terms of rules 146, 240 and 242 which commence prior to the effective date of regulation D (April 15, 1982) and which continue past June 30, 1982, the Commission takes the administrative position that no registration is required under the Securities Act.

The staff will issue interpretive letters to assist persons in complying with regulation D, but the staff will not issue no-action letters as to whether a transaction satisfies the requirements of the regulation. With respect to resales of securities, the staff will continue its present policy of not expressing an opinion on inquiries regarding the following: (1) Hypothetical situations; (2) The removal of restrictive legends from securities; (3) Whether a person is an affiliate; or (4) Requests for no-action positions regarding securities acquired on or after April 15, 1972, as set forth in Release No. 33–6099 (August 2, 1979) (44 FR 46752).

V. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis regarding regulation D, Form D and rule 215 in accordance with 5 U.S.C. 604.

A copy of this analysis may be obtained by contacting David B. H. Martin, Jr., Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–2573.

Text of Rules

17 CFR Chapter II is amended as follows:

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

1. By revising paragraph (a)(3) of § 230.144 as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of regulation D under the Act, or securities that are subject to the resale limitations of regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

* * * * *

§ 230.146 [Removed]

2. By removing § 230.146.

3. By revising paragraph (a)(5) of § 230.148 as follows:

§ 230.148 Persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings.

* * * * *

(a) * * *

(5) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of regulation D under the Securities Act of 1933, or securities that are subject to the resale limitations of regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

* * * * *

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)) shall include the following persons:

(a) Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 with total assets in excess of $5,000,000;

(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code with total assets in excess of $5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any person who purchases at least $150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following: (1) cash, (2) securities for which market quotations are readily

available, (3) an unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (4) the cancellation of any indebtedness owed by the issuer to the purchaser;

(f) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(g) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year; and

(h) Any entity in which all of the equity owners are accredited investors under paragraph (a), (b), (c), (d), (f) or (g) of this § 230.215.

§ 230.240 [Removed]

5. By removing § 230.240.

§ 230.242 [Removed]

6. By removing § 230.242.

7. By adding a new regulation D, §§ 230.501 through 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, civil liability, or other provisions of the federal securities laws. 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. Regulation D is intended to be a basic element in a uniform system of federal-state limited offering exemptions consistent with the provisions of sections 18 and 19(c) of the Act. In those states that have adopted Regulation D, or any version of Regulation D, special attention should be directed to the applicable state laws and regulations, including those relating to registration of person who receive remuneration in connection with the offer and sale of securities, to disqualification of issuers and other persons associated with offerings based on state administrative orders or judgments, and to requirements for filings of notices of sales.

3. Attempted compliance with any rule in Regulation D does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption. For instance, an issuer's failure to satisfy all the terms and conditions of Rule 506 shall not raise any presumption that the exemption provided by section 4(2) of the Act is not available.

4. These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person 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.

5. These rules may be used for business combinations that involve sales by virtue of rule 145(a) (17 CFR 230.145(a)) or otherwise.

6. In view of the objectives of these rules and the policies underlying the Act, regulation D is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

§ 230.501 Definitions and terms used in Regulation D.

As used in regulation D, the following terms shall have the meaning indicated:

(a) *Accredited investor.* "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(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 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, or if the employee benefit plan has total assets in excess of $5,000,000;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of $5,000,000;

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general

partner of a general partner of that issuer;

(5) Any person who purchases at least $150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following: (i) cash, (ii) securities for which market quotations are readily available, (iii) an unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (iv) the cancellation of any indebtedness owed by the issuer to the purchaser;

(6) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(7) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year; and

(8) Any entity in which all of the equity owners are accredited investors under paragraphs (a) (1), (2), (3), (4), (6), or (7) of this section.

(b) *Affiliate.* An "affiliate" of, or person "affiliated" with, a specified 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, the person specified.

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard.

(d) *Business combination.* "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 for all or a part of its own or its parent's 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).

(e) *Calculation of number of purchasers.* For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply:

(1) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in paragraph (e)(1)(i) or (e)(1)(iii) of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in paragraph (e)(1)(i) or (e)(1)(ii) of this section collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(2) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (a)(8) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of regulation D.

Note.—The issuer must satisfy all the other provisions of Regulation D for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered the "purchasers" under Regulation D regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.

(f) *Executive officer.* "Executive officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration orfinance), any other officer who performs a policy making function, or 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 making functions for the issuer.

(g) *Issuer.* The definition of the term "issuer" in section 2(4) of the Act shall apply, except that in the case of a

proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 *et seq.*), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(h) *Purchaser representative.* "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes 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 securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any persons related to him as specified in paragraph (h)(1)(i) or (h)(1)(iii) of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in paragraph (h)(1)(i) or (h)(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;

(2) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and 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 acknowledgment specified in paragraph (h)(3) of this section any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that 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.—A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to brokers and dealers under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under the Investment Advisers Act of 1940.

Note 2.—The acknowledgment required by paragraph (h)(3) and the disclosure required by paragraph (h)(4) of this section must be made with specific reference to each prospective investment. Advance blanket acknowledgment, 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 his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the interest of the purchaser.

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under regulation D:

(a) *Integration.* All sales that are part of the same regulation D offering must meet all of the terms and conditions of regulation D. Offers and sales that are made more than six months before the start of a regulation D offering or are made more than six months after completion of a regulation D offering will not be considered part of that regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under regulation D, other than those offers or sales of securities under an employee benefit plan as defined in rule 405 under the Act (17 CFR 230.405).

Note.—The term "offering" is not defined in the Act or in Regulation D. If the issuer offers or sells securities for which the safe harbor rule in paragraph (a) of this section is unavailable, the determination as to whether separate sales of securities are part of the same offering (*i.e.* are considered "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 Regulation D:

(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* Release No. 33-4552 (Novmber 6, 1962) (27 FR 11316).

(b) *Information requirements.*—(1) *When information must be furnished.*

(i) If the issuer sells securities either under § 230.504 or only to accredited investors, paragraph (b) of this § 230.502 does not require that specific information be furnished to purchasers.

(ii) If the issuer sells securities under § 230.505 or 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to all purchasers during the course of the offering and prior to sale.

(2) *Type of information to be furnished.* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, the issuer shall furnish the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) *Offerings up to $5,000,000.* The same kind of information as would be required in Part I of Form S-18 (17 CFR 239.28), except that only the financial statements for the issuer's most recent fiscal year must be certified by an independent public or certified accountant. If Form S-18 is not available to an issuer, then the issuer shall furnish the same kind of information as would be required in Part I of a registration statement filed under the Act on the form that the issuer would be entitled to use, except that only the financial statements for the most recent two fiscal years prepared in accordance with generally accepted accounting principles shall be furnished and only the financial statements for the issuer's most recent fiscal year shall be certified by an independent public or certified accountant. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(B) *Offerings over $5,000,000.* The same kind of information as would be required in Part I of a registration statement filed under the Act on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the

start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, the issuer shall furnish the information specified in paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of § 240.14a–3 or 240.14c–3 under the Exchange Act, the definitive proxy statement filed in connection with that annual report, and, if requested by the purchaser in writing, a copy of the issuer's most recent Form 10–K (17 CFR 249.310) under the Exchange Act.

(B) The information contained in an annual report on Form 10–K under the Exchange Act or in a registration statement on Form S–1 (17 CFR 239.11) under the Act or on Form 10 (17 CFR 249.210) under the Exchange Act, whichever filing is the most recent required to be filed.

(C) The information contained in any reports or documents required to be filed by the issuer under sections 13(a), 14(a), 14(c), and 15(d) of the Exchange Act since the distribution or filing of the report or registration statement specified in paragraph (A) or (B), and 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 that are not disclosed in the documents furnished.

(iii) 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 of that report 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 the exhibits are made available to the purchaser, upon his written request, prior to his purchase.

(iv) At a reasonable time prior to the purchase of securities by any purchaser that is not an accredited investor in a transaction under § 230.505 or 230.506, the issuer shall furnish the purchaser a brief description in writing of any written information concerning the offering that has been provided by the issuer to any accredited investor. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request, prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under § 230.505 or 230.506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under paragraph (b)(2) (i) or (ii) of this section.

(vi) For business combinations, in addition to information required by paragraph (b)(2) of this section, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transaction that are materially different from those for all other security holders.

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by 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 televison or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an 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 be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(2) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Act and, therefore, cannot be resold unless they are registered under the Act or unless an exemption from registration is available; and

(3) Placement of a legend on the certificate or other document that evidences 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.

§ 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) at the following times:

(1) No later than 15 days after the first sale of securities in an offering under regulation D;

(2) Every six months after the first sale of securities in an offering under regulation D, unless the final notice required by paragraph (a)(3) of this Section has been filed; and

(3) No later than 30 days after the last sale of securities in an offering under regulation D.

(b) If the offering is completed within the 15 day period described in paragraph (a)(1) of this Section and if the notice is filed no later than the end of that period but after the completion of the offering, then only one notice need be filed to comply with paragraphs (a)(1) and (3) of this Section.

(c) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(d) If sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer under § 230.502(b)(2) to any purchaser that is not an accredited investor.

(e) If more than one notice for an offering is required to be filed under paragraph (a) of this Section, notices after the first notice need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B of the first notice.

(f) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this Section:

(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) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this Section by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and that is not an investment company shall be exempt from the provisions of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met.*—(1) *General conditions.* To qualify for exemption under this Section offers and sales must satisfy the terms and conditions of §§ 230.501 through 230.503, except that the provisions of §§ 230.502 (c) and (d) shall not apply to offers and sales of securities under this Section that are made exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions.

(2) *Specific condition.*—(i) *Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $500,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this Section in reliance on any exemption under Section 3(b) of the Act or in violation of Section 5(a) of the Act.

Note 1.—The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sold $200,000 of its securities on June 1, 1982 under this § 230.504 and an additional $100,000 on September 1, 1982, the issuer would be permitted to sell only $200,000 more under this § 230.504 until June 1, 1983. 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, 1983, the issuer could then sell $400,000 of its securities because the June 1, 1982 sale would not be within the preceding twelve months.

Example 2. If an issuer sold $100,000 of its securities on June 1, 1982 under this § 230.504 and an additional $4,500,000 on December 1, 1982 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1983. Until then the issuer must count the December 1, 1982 sale towards the limit of $500,000 within the preceding twelve months.

Note 2.—If a transaction under this section fails to meet the limitation on the aggregate offering price, it does not affect the availability of this Section for the other transactions considered in applying such limitation. For example, if the issuer in *Example 1* made its third sale on May 31, 1983, in the amount of $250,000, this § 230.504 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) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this section by an issuer that is not an investment company shall be exempt from the provisions of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met.*—(1) *General conditions.* To qualify for exemption under this section, offers and sales must satisfy the terms and conditions of §§ 230.501 through 230.503.

(2) *Specific conditions.*—(i) *Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.505, as defined in § 203.501(c), shall not exceed $5,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act.

Note.—The calculation of the aggregate offering price is illustrated as follows:

Example 1—If an issuer sold $2,000,000 of its securities on June 1, 1982 under this § 230.505 and an additional $1,000,000 on September 1, 1982, the issuer would be permitted to sell only $2,000,000 more under this § 230.505 until June 1, 1983. Until that date the issuer must count both prior sales towards the $5,000,000 limit. However, if the issuer made its third sale on June 1, 1983, the issuer could then sell $4,000,000 of its securities because the June 1, 1982 sale would not be within the preceding twelve months.

Example 2. If an issuer sold $500,000 of its securities on June 1, 1982 under § 230.504 and an additional $4,500,000 on December 1, 1982 under this section, then the issuer could not sell any of its securities under this section until June 1, 1983. At that time it could sell an additional $500,000 of its securities.

(ii) *Limitation on number of purchasers.* The issuer shall reasonably believe that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

Note.—See § 230.501(e) for the calculation of the number of purchasers and § 230.502(a) for what may or may not constitute an offering under this section.

(iii) *Disqualifications.* No exemption under this § 230.505 shall be available for the securities of any issuer described in § 230.252(c), (d), (e), or (f) of regulation A, except that for purposes of this section only:

(A) The term "filing of the notification required by § 230.255" as used in § 230.252(c), (d), (e) and (f) shall mean the first sale of securities under this section;

(B) The term "underwriter" as used in § 230.252(d) and (e) shall mean a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities under this § 230.505; and

(C) Paragraph (b)(2)(iii) of this section shall not apply to any issuer if the Commission determines, 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 by the Commission in any other proceeding or matter with respect to the issuer or any other person.

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

(a) *Exemption.* Offers and sales of securities by an issuer that satisfy the conditions in paragraph (b) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Act.

(b) *Conditions to be met.*—(1) *General conditions.* To qualify for exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 through 230.503.

(2) *Specific conditions.*—(i) *Limitation on number of purchasers.* The issuer shall reasonably believe that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

Note.—See § 230.501(e) for the calculation of the number of purchasers and § 230.502(a) for what may or may not constitute an offering under this section.

(ii) *Nature of purchasers.* The issuer shall reasonably believe immediately prior to making any sale that each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.146 [Removed]

8. By removing § 239.146.

§ 239.240 [Removed]

9. By removing § 239.240.

§ 239.242 [Removed]

10. By removing § 239.242.

§ 239.246 [Removed]

11. By removing § 239.246.

12. By adding a new § 239.500 to read as follows:

§ 239.500 Form D, notice of sales of securities under 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 at the following times:

(1) No later than 15 days after the first sale of securities in an offering under Regulation D (§§ 230.501–230.506 of this chapter) or under section 4(6) of the Securities Act of 1933;

(2) Every six months after the first sale of securities in an offering under Regulation D or under section 4(6), unless the final notice required by paragraph (a)(3) of this section has been filed; and

(3) No later than 30 days after the last sale of securities in an offering under Regulation D or under section 4(6).

(b) If the offering is completed within the 15 day period described in paragraph (a)(1) of this section and if the notice is filed no later than the end of that period but after the completion of the offering, then only one notice need be filed to comply with paragraphs (a)(1) and (3) of this section.

(c) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(d) If more than one notice for an offering is required to be filed under paragraph (a) of this section, notices after the first notice need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B of the first notice.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section:

(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 adopted under section 19(a) and 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(a) and 77s(c)). Additionally, the Commission adopts Rule 215 (17 CFR 230.215) under section 2(15), Rules 504 and 505 (17 CFR 230.504 and 230.505) under section 3(b), amendments to Rules 144 and 148 (17 CFR 230.144 and 230.148) under section 4(1), Rule 506 (17 CFR 230.506) under section 4(2), Form D (17 CFR 239.500) under section 4(6) of the Securities Act of 1933 (15 U.S.C. 77b(15), 77c(b), 77d(1), 77d(2), 77d(6)).

(Secs. 2(15), 3(b), 4(1), 4(2), 4(6), 19(a), 19(c), 48 Stat. 74, 75, 77, 85; sec. 209, 48 Stat. 908; c.122, 59 Stat. 167; sec. 12, 78 Stat. 580; 84 Stat. 1480; sec. 308(a)(2), 90 Stat. 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; secs. 505, 622, 701, 94 Stat. 2291, 2292, 2294 15 U.S.C. 77b(15), 77c(b), 77d(1), 77d(2), 77d(6), 77s(a), 77s(c))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 8, 1982.

[FR Doc. 82-6921 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 240

[Release No. 34-18556, File No. S7—914]

Inspection of Newly Registered Brokers and Dealers by Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule that authorizes and directs self-regulatory organizations to conduct an inspection of every new broker-dealer member within six months of the firm's registration with the Commission. The purposes of this rule are to avoid duplicative Commission and self-regulatory organization inspections of broker-dealers and to use the Commission's resources more efficiently.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Robert A. Love, Esq., Division of Market Regulation (202–272–2781).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is authorizing and directing self-regulatory organizations ("SROs") with examination responsibility under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Act") with respect to newly registered broker and dealer members to conduct the inspections required under section 15 (b)(2)(C) (15 U.S.C. 78o(b)(2)(C)) of the Act. In a November 1981 release [1] the Commission announced the proposal, adopted today, which requires SROs to conduct a financial and operational inspection of a broker or dealer member within six months of the date of such member's registration with the Commission. It also allows SROs to delay, for a period not to exceed six months, inspections for compliance with other applicable provisions of the Act and rules thereunder. In response to comments received, the rule as adopted today differs in one minor respect from the proposal, insofar as SROs are not expressly required pursuant to rule 15b2–2 to inspect members for compliance with SRO rules.

Discussion

Congress added section 15(b)(2)(C) to the Act as part of the Securities Acts Amendments of 1975 [Pub. L. 94–29] primarily because of its concern over the financial and operational difficulties which new broker-dealer firms may encounter in their early months of operation. The section generally requires that brokers and dealers be inspected by the Commission for compliance with the Act and rules within six months of registration with the Commission. It also authorizes the Commission to delay the inspection of any class of broker or dealer for up to six months, and further provides that, upon the Commissions's "authorization and direction," an appropriate SRO shall conduct these first year inspections.

Although the Commission has not previously authorized and directed ("assigned") SROs to conduct inspections under section 15(b)(2)(C), SROs generally have included within their member firm inspection programs early inspections of newly registered brokers and dealers. Such inspections appear to be substantially consistent with the kind of inspection contemplated by Congress when it enacted section 15(b)(2)(C). In addition, pursuant to the requirements of that section, the Commission's regional offices also have conducted an examination program with respect to newly registered brokers and dealers.

It is the Commission's view that assigning to SROs responsibility for inspections under section 15(b)(2)(C) is consistent with the Act's scheme of self-regulation,[2] and permits more efficient use of the Commission's resources. The Commission also believes that this assignment imposes minimal, if any, additional burdens upon the SROs.

The concerns that gave rise to enactment of section 15(b)(2)(C) centered upon the potentially large losses which could result from the operations of an inexperienced broker or dealer.[3] Accordingly, and as

[1] Securities Exchange Act Release No. 18248 (November 10, 1981), 46 FR 56426 (November 16, 1981).

[2] *See generally* section 19 of the Act (15 U.S.C. 78s).

[3] *See* Study of the Securities Industry: Hearings Before the Subcomm. on Commerce & Finance of the

Continued

indicated in paragraph (b) of the rule, the Commission does not believe it is appropriate to exercise its authority under the section to delay financial and operational inspections of any class of new brokers and dealers that have started operating. The Commission believes that the potential for loss of customers' funds and securities if brokers and dealers are not inspected for compliance with applicable financial responsibility rules during their first six months of operations outweighs any marginal benefits of delaying those inspections.

Although Congress was primarily concerned with the financial and operational condition of brokers and dealers, section 15(b)(2)(C), clearly encompasses inspections for compliance with the entire Act.[4] To satisfy the requirements of section 15(b)(2)(C), inspections must therefore include, in addition to an inspection for compliance with applicable financial responsibility rules (as defined in paragraph (a) of the rule), a complete compliance review for all other applicable provisions of the Act and rules thereunder.

However, since weeks or even months may pass after a firm's registration before it starts conducting an active business, there may not be sufficient records within the first six months to permit a thorough, meaningful review for compliance with all other applicable provisions of the Act and rules thereunder, particularly those relating to sales practices. Therefore, under the assignment, SROs have the option of completing this review at the time of the financial and operational inspection or, pursuant to paragraph (c) of the rule, delaying it for an additional period, which must, however, be within one year of the date of the firm's registration with the Commission. Of course, if the review of books and records of the member during the initial financial and operational inspection, or any other information of which the SRO is aware, indicates that there may be violations of the securities laws, then the SRO should complete a full examination.

Paragraph (d) of the rule postpones, until the second six month period from registration, inspections of broker-dealer members that have not yet initiated operations. SROs are to determine through financial reporting and other communications with a member whether it has commenced business. This postponement should result in a more meaningful inspection under the section.

In addition, paragraph (e) of the rule provides that an SRO is not obligated to inspect a member where, for example, due to the lapse of time prior to the firm's membership in the SRO, either another SRO has conducted an inspection of the firm pursuant to this rule or the Commission has conducted the inspection pursuant to section 15(b)(2)(C).

Public Comments

The New York Stock Exchange, Inc. ("NYSE") and the staff of the National Association of Securities Dealers, Inc. ("NASD") submitted comments concerning the rule as originally proposed. The NASD fully supports adoption of the rule. The NYSE commented on several aspects of the rule, which we discuss below.

The NYSE questioned whether section 15(b)(2)(C) supports a requirement that the examining SRO inspect for compliance with any SRO rules. The NYSE noted that the section "refers *only* to the Act and its rules (and not to the rules of any SRO)" (emphasis in original). After consideration, the Commission believes that there is a legitimate question as to whether section 15(b)(2)(C) supports a requirement that SROs inspect members for compliance with SRO rules. More importantly, the absence of such a requirement in rule 15b2–2 would not, in practice, result in a failure of SROs to inspect members for compliance with SRO rules. This is true because SROs have an *independent* responsibility under the Act to ensure members' compliance with their own rules. Sections 6(b), 15A(b) and 19(g) of the Act require SROs to enforce their own rules. It follows, therefore, that the Commission would ordinarily expect SROs to schedule a separate inspection to review members' compliance with SRO rules if they did not include such a review within the inspection pursuant to rule 15b2–2. This being the case, the rule proposal assumed that SRO's would not want to schedule two separate examinations for what could be accomplished in one. As revised, however, the rule omits references to SRO rules in order to make clear that SRO's have the option of conducting one inspection for members' compliance with the Act pursuant to rule 15b2–2 and a separate inspection to ensure compliance with SRO rules.

The NYSE also noted that, under the rule as proposed for comment, "applicable financial responsibility rules" would include the rules of "any" SRO relating to capital, margin, recordkeeping, hypothecation, lending requirements or to the protection of funds or securities. The Exchange noted that read literally this language would require the examining SRO to inspect new members for compliance with the rules of all SROs, including other SROs with which the examining SRO had no rule 17d–2 agreement,[5] and even if the broker-dealer were not a member of those other SROs. Ordinarily, however, an examining SRO would be responsible only for ensuring a member's compliance with the Act and the rules promulgated thereunder, its own rules and the rules of any SRO with which it had a relevant rule 17d–2 agreement. The Commission considers this comment to be moot in view of its decision to delete from rule 15b2–2 any reference to SRO rules.

Finally, the Exchange commented that the legislative history of section 15(b)(2)(C) principally reflects a concern with broker-dealers that conduct business with the public. It is the Exchange's view that the concerns underlying the section "are not realistically prevalent with respect to floor brokers whose basic capital requirements may be met by the value of the Exchange membership of the member." The Exchange's comment letter stated that "the rule should have no application to SRO member organizations who transact no public business." It is the Commission's view that, notwithstanding the focus of the Congress on the capital and recordkeeping provisions most applicable to broker-dealers with a public business, the section neither distinguishes nor provides for an exemption from inspection of broker-dealers that do not conduct a public business. Moreover, inspections of newly registered broker-dealers that do not conduct a public business, such as floor brokers, clearly further the section's aims of strengthening the overall integrity of the marketplace and preventing failures of fledgling broker-dealers. Net capital, operational, and other problems of inexperienced floor brokers have the potential of adversely affecting the businesses of other market professionals and, ultimately, the entire investing public. The Commission also believes that due to the relatively small number of newly registered exhange floor brokers, no significant additional burden would be imposed on an exchange by virtue of inspecting those

House Comm. on Interstate & Foreign Commerce, 92d Cong., 1st Sess. 129 (Comm. Print, 1971).

[4] The section requires "an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of (the Act) and the rules and regulations thereunder. * * *."

[5] Rule 17d–2 provides for the allocation among SROs of regulatory responsibility for dual members, including examination for compliance with those SROs' rules.

brokers pursuant to rule 15b2–2. The Commission has therefore concluded that it would not be appropriate to modify the rule in response to this comment by the NYSE.

In conclusion, the Commission believes that this action will permit it to utilize its limited resources more efficiently by eliminating its own somewhat duplicative inspections of newly registered brokers and dealers and at the same time provide adequate flexibility to the SROs in designing and conducting their inspection programs without diminishing investor protections under the Act.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), the Chairman has certified that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Commission has not received any comments concerning the Chairman's certification.

Text of Rule

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

In accordance with the foregoing, Part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 240.15b2–2 to read as follows:

§ 240.15b2–2 Inspection of newly registered brokers and dealers.

(a) *Definition.* For the purpose of this section the term "applicable financial responsibility rules" shall include: (1) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a) or 17(e)(1)(A) of the Act; (2) any rule adopted by the Commission relating to hypothecation or lending of customer securities; and (3) any other rule adopted by the Commission relating to the protection of funds or securities.

(b) Each self-regulatory organization that has responsibility for examining a broker or dealer member for compliance with applicable financial responsibility rules is authorized and directed to conduct an inspection of the member, within six months of the member's registration with the Commission, to determine whether the member is operating in conformity with applicable financial responsibility rules.

(c) The examining self-regulatory organization is further authorized and directed to conduct an inspection of the member no later than twelve months from the member's registration with the Commission, to determine whether the member is operating in conformity with all other applicable provisions of the Act and rules thereunder.

(d) In each case where the examining self-regulatory organization determines that a broker or dealer member has not commenced actual operations within six months of the member's registration with the Commission, it shall delay the inspection pursuant to this section until the second six month period from the member's registration with the Commission.

(e) No inspection need be conducted as provided for in paragraphs (b) and (c) of this section if: (1) The member was registered with the Commission prior to April 26, 1982; (2) an inspection of the member has already been conducted by another self-regulatory organization pursuant to this section; or (3) an inspection of the member has already been conducted by the Commission pursuant to section 15(b)(2)(C) of the Act.

Statutory Authority

The Securities and Exchange Commission, acting pursuant to the Act, and particularly sections 2, 15 and 23 thereof (15 U.S.C. 78b, 78o and 78w), hereby adopts § 240.15b2–2. The Commission finds that there will be no burden upon competition imposed by the amendment.

By the Commission.

George A. Fitzsimmons,

Secretary.

March 10, 1982.

[FR Doc. 82–7042 Filed 3–15–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Revised Organization; Correction

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 82–4892 appearing at page 8761 in the issue for Tuesday, March 2, 1982, the following change is made: in § 5.100 *Headquarters* in the mailing address for the Bureau of Biologics, under footnote 2, change the zip code from "20014" to read "20205."

EFFECTIVE DATE: March 2, 1982.

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

Dated: March 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–7231 Filed 3–15–82; 10:41 am]

BILLING CODE 4160–01–M

21 CFR Part 5

Delegations of Authority and Organization; Certification of True Copies

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority regarding certification of true copies and use of the Department of Health and Human Services seal as it relates to Bureau of Biologics and field officials. The action will redelegate the authority to staff personnel who were assigned freedom of information functions for the Bureau of Biologics in a recent reorganization and to regional laboratory directors.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: The responsibility for freedom of information functions has been reassigned from the compliance area of the Bureau of Biologics to the Office of the Director of that Bureau. The delegation of authority in § 5.22(a)(10) (21 CFR 5.22(a)(10)) is being amended to redelegate the authority to certify true copies and to have the Department seal affixed to such certifications. Officials of the Planning, Financial Management, and Information Staff have been redelegated this responsibility.

§ 5.22(a) (17) and (18) (21 CFR 5.22(a) (17) and (18)) are being added to redelegate the authority to the Director, New York Laboratory Division and the Director, Science Division in Atlanta.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) 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)), Part 5 is amended by revising § 5.22(a)(10) and adding § 5.22(a) (17) and (18) to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(10) The Director and the Deputy Director of the Bureau of Biologics, the Executive Officer, the Chief of the Planning, Financial Management, and Information Staff, and the Chief of the Information Services Section of that Bureau.

* * * * *

(17) Director, New York Laboratory Division, Region II.

(18) Director, Science Division, Region IV.

* * * * *

Effective date. This regulation shall be effective March 16, 1982.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 9, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7010 Filed 3-15-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 131

[Docket No. 76N-0175]

Stabilizers and Emulsifiers in Lowfat Milk and Skim Milk; Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is staying the effective date of the provisions of the standards of identity for lowfat milk and skim milk that would have required the phrase "with added milk solids not fat" to accompany the name of the food when either food is made to contain not less than 10 percent milk-derived nonfat solids. This stay has the effect of continuing the earlier requirement of the use of the terms "protein fortified" or "fortified with protein" until this labeling issue is resolved through a public hearing or other procedures. This stay is in response to objections filed on the December 12, 1980 final rule.

EFFECTIVE DATE: The stay is effective March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA published a final rule establishing standards of identity for lowfat milk and skim milk (21 CFR 18.10 and 18.20, subsequently recodified as 21 CFR 131.135 and 131.145, respectively) that permitted the use of emulsifiers, stabilizers, or a combination of both, in an amount not more than 2 percent by weight of the solids in the milk-derived ingredients added. (Section 131.145 was redesignated as § 131.143 in the **Federal Register** of January 30, 1981 (46 FR 9924)). Objections were filed to this limitation. In the **Federal Register** of December 5, 1974 (39 FR 42351), FDA stayed those portions of §§ 131.135(c)(3) and 131.143(c)(3) that prohibit the use of stabilizers and emulsifiers in lowfat and skim milk at greater than 2 percent of the optional milk-derived ingredients added.

As a result of the objections to the October 10, 1973 final rule, FDA published a proposal in the **Federal Register** of October 26, 1976 (41 FR 46873) to (1) allow the use of stabilizers, with or without emulsifiers, to increase the viscosity of lowfat milk and skim milk; (2) provide for the terms "nonfat milk solids," "nonfat milk-derived solids," or "with added thickeners," whichever is appropriate, as part of the name of the food when viscosity-increasing ingredients are used; and (3) establish definitions for "nonfat milk solids" and "nonfat milk-derived solids." However, based on the comments received on the October 26, 1976 proposal, FDA published a final rule in the **Federal Register** of December 12, 1980 (45 FR 81734) terminating the rulemaking proceedings on these provisions. In addition, FDA required, in lieu of the terms "nonfat milk solids" and "nonfat milk-derived solids," the use of the phrase "with added milk solids not fat" when lowfat milk or skim milk were made to contain not less than 10 percent milk-derived nonfat solids, and discontinued use of the terms "protein fortified" and "fortified with protein." Written objections and requests for hearing were to be filed on or before January 12, 1981.

Two objections and requests for hearings were received. One objection and request for hearing concerned the discontinuance of the use of the terms "protein fortified" and "fortified with protein." The objection stated that the terms had been in use for 7 years, that consumers recognize the meaning of the terms, and that lowfat milk and skim milk bearing this labeling also bear nutrition labeling, enabling consumers to compare easily the differences between these products and products that are not protein fortified. The objection contended that the nutritional value of lowfat milk and skim milk should be determined on a daily basis (i.e., consumption of 3 one-cup servings) rather than on a single-serving basis because that is the usual pattern of consumption. The objection further contended that FDA's statement "nutritional differences between lowfat milk and skim milk thickened with stabilizers and emulsifiers, and those thickened with added milk-derived ingredients could be sufficiently important, particularly in the case of children * * *" indicates the nutritional importance of added milk solids not fat and justifies continued use of the protein fortification terms.

Regarding FDA's position that "protein fortified" labeling is inconsistent with a general food fortification policy statement, the objection stressed that the "protein fortified" labeling provisions resulted from an extensive rulemaking proceeding carried out in compliance with the Federal Food, Drug, and Cosmetic Act. Furthermore, the fortification policy statement would not become effective for 3 years. Therefore, the objection maintained that the policy statement must defer to the standard of identity and not vice versa.

The second objection and request for hearing concerned the "with added milk solids not fat" labeling that was to replace the "protein fortifed" and "fortified with protein" labeling. This objection asserted that the phrase is not informative, is potentially misleading to consumers, and will not convey meaningful, factual product information.

The filing of proper objections stays the effective date of §§ 131.135(e)(1)(iv) and 131.143(e)(1)(iii), which would have required that the phrase "with added milk solids not fat" accompany the name of the food when lowfat milk or skim milk is made to contain not less than 10 percent milk-derived nonfat solids, until this issue is resolved. This stay means that the terms "protein fortified" and "fortified with protein" shall continue to be used on the labels of lowfat milk and skim milk until this labeling issue is resolved through a public hearing or other procedures. FDA concludes that the objections filed may raise genuine and substantial issues of fact for resolution at a hearing as provided for under 21 CFR 12.24. If a hearing is to be held, a notice announcing the hearing date, time, and location will be published in the **Federal Register** at a later date.

As stated earlier, the December 12, 1980 final rule terminated rulemaking on

provisions that would have permitted the use of stabilizers, with or without emulsifiers, as viscosity-increasing ingredients, and the December 5, 1974 stay of the effective date of those portions of §§ 131.135(c)(3) and 131.143(c)(3) that limited the use of stabilizers and emulsifiers remains in effect until this matter is resolved. FDA advises that the issue of whether to permit the use of stabilizers, with or without emulsifiers, in lieu of milk-derived nonfat solids to increase the viscosity of lowfat milk and skim milk will be resolved at the same time that FDA resolves the protein fortification labeling issue, through a public hearing or other procedure.

PART 131—MILK AND CREAM

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) 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)), the effective dates of §§ 131.135(e)(1)(iv) and 131.143(e)(1)(iii) are stayed until further notice.

Effective date. The stay is effective March 16, 1982.

(Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: March 11, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7156 Filed 3-12-82; 2:20 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7814]

Income Tax; Taxable Years Beginning After December 31, 1953; Dollar-Value LIFO Inventories—Use of Government Price Indexes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the valuation of dollar-value last-in, first-out (LIFO) inventories. These regulations provide the public with guidance regarding a method of valuing dollar-value LIFO inventories and would affect taxpayers required to maintain inventories.

DATES: The amendments are to be effective for taxable years beginning after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Philip R. Bosco of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Final Regulatory Flexibility Analysis

Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954. These amendments conform the existing regulations under section 472 to that Code section as amended by Pub. L. 97-34 and are issued under the authority contained in sections 472 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 159, 917; 26 U.S.C. 472, 7805).

On January 16, 1981, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 472 of the Internal Revenue Code of 1954, 46 FR 3912. The amendments were proposed to simplify the use of the dollar-value LIFO method by providing that taxpayers may establish inventory pools under special rules and may compute an inventory price index for valuing a pool by referring to a stated percentage of the percent change in selected consumer or producer price indexes prepared by the Bureau of Labor Statistics and published in the *CPI Detailed Report* or *Producers Prices and Price Indexes*, which are monthly reports on consumer and producer price movements. A public hearing on the proposed amendments was requested and was held on June 30, 1981. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The preamble to the notice of proposed rulemaking summarizes and explains the proposed amendments. The remainder of this preamble discusses the major comments from the public and changes to the proposed regulations.

Public Comments and Changes to the Proposed Regulations

The proposed regulations provided that the regulations would be applicable for taxable years beginning after they were adopted. Several commentators suggested that the regulations should be made applicable to taxable years beginning after the date the regulations become final. The Treasury decision modifies the effective date of the regulations to be applicable for taxable years beginning after December 31, 1981.

In developing the proposed regulations, it was determined that the consumer and producer price indexes prepared by the Bureau of Labor Statistics would overstate the movement of inventory prices experienced by some taxpayers and would understate the movement of inventory prices experienced by other taxpayers. Taxpayers experiencing a rate of inventory price inflation lower than the published rate would tend to choose the use of the published consumer and producer price indexes. Taxpayers experiencing a rate of inventory price inflation higher than the published rate would tend to choose to use a price index based on their own inventory price inflation experience. It was decided that the use of the consumer and producer price indexes prepared by the Bureau of Labor Statistics should not depend on whether a taxpayer's actual rate of inventory price inflation was relatively high or low. However, it was also decided that the use of overstated inflation rates to value LIFO inventory pools should be reduced to the extent possible consistent with the purposes of simplifying the use of the dollar-value LIFO method. Therefore, the proposed regulations provided that a taxpayer would be limited to 80 percent of the percent change in the applicable CPI or PPI indexes. Several commentators argued for use of 100 percent of the applicable indexes. The 80 percent limitation is intended to be an alternative to computing an inventory price index based on the taxpayer's own inflation rate and is intended to be an appropriately conservative estimate that the taxpayer can use without regard to the inflation rate actually experienced by the taxpayer. However, since small businesses, as a practical matter, are unable to compute their own inflation experience and therefore do not have the opportunity to choose to use their own inflation experience, the Treasury decision modifies the 80 percent limitation and allows an eligible small business, as defined by section 474 (b) of the Code, to use 100% of the percent change in the applicable indexes. All other taxpayers would be limited to 80 percent of the percent change in the applicable indexes.

The proposed regulations provided that a taxpayer must use the most detailed CPI or PPI indexes available for the goods in its various LIFO pools. Several commentators argued that such a requirement would necessitate

inventory records at a level of detail beyond the needs and capabilities of the majority of taxpayers who would benefit most from the use of published indexes. The Treasury decision modifies that requirement. A taxpayer will be required to use the most detailed index only when 10 percent or more of the value of the taxpayer's inventory falls within such an index category. If 10 percent of inventory value does not fall within an index category, the next less detailed index category that does include 10 percent of the inventory value will be used. The index for that 10 percent separate index category will be a weighted average of the detailed indexes for the category items comprising the 10 percent separate index category that are actually present in the taxpayer's inventory. For purposes of calculating this separate index, the detailed items will be weighted according to the weights used by BLS.

The use of BLS weights is limited only to the determination of the appropriate index for a separate index category. In computing the overall index for a particular pool, the taxpayer will weight the appropriate indexes for the separate index categories comprising the pool according to the taxpayer's actual inventory weights for such index categories. The Internal Revenue Service intends to publish the BLS weights as well as illustrations of the various computations.

An issue left undecided in the proposed regulations was how the 80 percent limitation should be applied to the inflation rate for a period of more than one taxable year; that is, should it be applied to the annual inflation rate or to the cumulative inflation rate. The Treasury decision provides that the limitation should be applied to the cumulative published inflation rate.

Other comments were received suggesting that additional dollar-value LIFO issues should be addressed. It was decided that the resolution of such issues in these regulations would unduly lengthen and complicate the regulations.

Additional Information

Evaluation of the effectiveness of the regulations after issuance will be based on comments received from offices within the Internal Revenue Service and the Treasury Department, other governmental agencies, state and local governments, and the public.

These regulations will affect any small business that is required under section 471 of the Internal Revenue Code to maintain inventories, elects to use the LIFO method in valuing such inventories, and wishes to use the rules provided by the proposed amendments. No taxpayer will be required to use the method provided by the proposed amendments.

These regulations require any small business wishing to use the rules provided by the proposed amendments to report for the first year the method used, the inventory pools used, the type of goods included in each pool, and the consumer or producer price index or indexes selected for each pool. In addition, for each year in which the inventory price index computation method is used, the taxpayer will be required to maintain adequate books and records showing how inventory pools were established, how the consumer and producer price indexes were selected, and how the inventory price indexes and the change in such indexes were computed. Professional accounting skills may be desirable in the initial year of using the method provided by the proposed rules, although information disseminated by various industry groups may provide small businesses with adequate assistance. Otherwise, the rules prescribed in the proposed amendments do not require any professional skills in addition to those already needed to keep inventory accounting records for a small business.

These regulations are being proposed to reduce the economic impact on small businesses of the rules relating to the use of the LIFO method by simplifying the computations required under such method, thereby enabling more small entities to avail themselves of the tax reduction benefits of the use of the LIFO method and reducing the computational and recordkeeping costs of taxpayers using the LIFO method.

Drafting Information

The principal author of these regulations is Philip R. Bosco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

The following amendments to 26 CFR Part 1 are adopted:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph (e) of § 1.472–8 is amended by adding new paragraph (e)(3) to read as set forth below:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(e) *Methods of computation of the LIFO value of a dollar-value pool.* * * *

(3) *Use of inventory price index computed with reference to consumer or producer price indexes*—(i) *In general.* For purposes of paragraph (e)(1) of this section, for taxable years beginning after December 31, 1981, an inventory price index computed in the manner provided by paragraph (e)(3) will be accepted by the Commissioner as an appropriate method of computing an index, and the use of such inventory price index to compute the LIFO value of a dollar-value inventory pool will be accepted as accurate, reliable, and suitable. A taxpayer using the inventory price index computation method provided by paragraph (e)(3) must use such method in determing the value of all goods for which the taxpayer has elected to use the LIFO method. However, the inventory price index computation method provided by paragraph (e)(3) may not be used by a taxpayer eligible to use inventory price indexes prepared by the United States Bureau of Labor Statistics for the purpose of valuing the LIFO inventories of a specific industry. Thus, a taxpayer eligible to use the retail price indexes prepared by the Bureau of Labor Statistics and published in *Department Store Inventory Price Indexes* may not use the inventory price index computation method provided by paragraph (e)(3). An inventory price index computed as provided by paragraph (e)(3) is computed in the manner provided by paragraph (e)(3)(ii) with reference to consumer or producer price indexes selected in the manner provided by paragraph (e)(3)(iii). Special rules for establishing inventory pools to be valued by an inventory price index computed in the manner provided by paragraph (e)(3) are in paragraph (e)(3)(iv). Rules relating to the adoption of, or change to, the method of computing an inventory price index in the manner provided by paragraph (e)(3) are in paragraph (e)(3) (v) and (vi).

(ii) *Computation of index.* An inventory price index computed in the manner provided by this (ii) shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods. The stated percentage for a taxpayer in a taxable year in which it is an eligible small business, as defined by section 474(b) of the Code, shall be 100 percent of the percent change in the selected price indexes. The stated percentage for

all other taxpayers shall be 80 percent of the percent change in the selected price indexes.

See paragraph (e)(3)(iii) of this section for rules relating to the selection of appropriate consumer or producer price indexes. Thus, if the selected consumer or producer price index for a specific category of goods increased 10 percent for the period December 1981 to December 1982, an inventory price index computed in the manner provided by this (ii) with reference to such consumer or producer price index will reflect an increase of either 10 percent for an eligible small business or 8 percent (80 percent of 10 percent) for all other taxpayers. If the selected consumer or producer price index for a specific category of goods increased 10 percent per year for the period December 1981 to December 1983, an inventory price index computed in the manner provided by this (ii) with reference to such consumer or producer price index will reflect an increase of either 21 percent for an eligible small business or 16.8 percent (80 percent of 21 percent) for all other taxpayers. If under paragraph (e)(3)(iii) it is necessary to select more than one specific consumer or producer price index for an inventory pool, the stated percentage of the percent change in such indexes is the stated percentage of the weighted average percent change for such indexes. Such weighted average is computed with reference to the relative amounts of costs in the inventory pool for each index category of goods. The costs to be used in computing such weighted average must be the relative current-year costs in ending inventory.

(iii) *Selection of consumer or producer price indexes*—(A) *In general.* An inventory price index computed as provided by paragraph (e)(3) of this section is computed with reference to the consumer or producer price indexes for specific categories of inventory items in the *CPI Detailed Report* or *Producer Prices and Price Indexes* published by the United States Bureau of Labor Statistics.

(B) *Selection of indexes by category of inventory items.* The selection of consumer or producer price indexes for an inventory pool is accomplished via a two-step process. First, the inventory items in each pool should be classified according to the detailed listings in the appropriate tables of the *CPI Detailed Report* or in *Producer Prices and Price Indexes* and assigned an index category. Second, an appropriate consumer or producer price index must be determined for each index category to which inventory items have been assigned. The assignment of index categories to the taxpayer's inventory items is accomplished by a process of elimination as follows:

(*1*) Whenever a specific inventory item in the taxpayer's inventory comprises 10 percent or more of total inventory value, such an inventory item must be placed in it's own, separate index category. The index category selected must be the most detailed index category which includes that specific inventory item. In addition, any other inventory item that is included in such most detailed index category must also be included in such index category.

(*2*) If there are inventory items still remaining in the pool that have not been included in an index category, the taxpayer, beginning with the most detailed index categories for such remaining inventory items, must investigate successively less detailed index category levels and select the first index category that contains remaining inventory items which in the aggregate comprise 10 percent or more of total inventory value. The index category so selected must be the separate index category for the included inventory items. This procedure must be repeated either until all inventory items in the pool have been included in an index category, or until the remaining inventory items in the aggregate comprise less than 10 percent of total inventory value, or until it has been determined that no appropriate index category exists for the aggregate of such remaining inventory items.

(*3*) If there are inventory items remaining in the pool that comprise less than 10 percent of total inventory value, the index category to be selected for these inventory items must be the most detailed index category that includes such inventory items. If it has been determined that no appropriate index category exists for such remaining inventory items, such remaining inventory items must be combined in a miscellaneous index category created by the taxpayer.

In no event shall an index category be selected that is less detailed than either the 11 general categories of consumer goods described in Tables 3 and 5 of the *CPI Detailed Report* (see paragraph (e)(3)(iv) of this section), or the 15 general categories of producer goods described in Table 6 of the *Producer Prices and Price Indexes.* The determination of the appropriate index for an index category is accomplished as follows:

(*4*) Whenever an index category has been selected pursuant to paragraph (e)(3)(iii)(B)(*1*) of this section the appropriate index must be the published index for that index category.

(*5*) Whenever an index category has been selected pursuant to paragraph (e)(3)(iii)(B) (*2*) or (*3*) of this section, the appropriate index must be a weighted average of the published indexes of the index category items actually present in the taxpayer's inventory, excluding any index category items that have been placed in any other separate index category, weighted according to the weights used by BLS. Thus, if a taxpayer's inventory contains every inventory item that comprises the selected index category and none of these inventory items have been placed in any other separate index category, the appropriate index must be the published index for that index category. In the case of a miscellaneous index category created by the taxpayer, the appropriate index must be a weighted average of the published indexes for the index category items, weighted according to the weights used by BLS.

The use of BLS weights is limited only to the determination of the appropriate index for an index category. In computing the index for a pool, the taxpayer will weight the appropriate indexes for the separate index categories comprising the pool according to the taxpayer's actual inventory weights for such separate index categories. Whether the selection of the consumer or producer price indexes to be used to compute an inventory price index is appropriate, and the propriety of all computations incidental to the use of such consumer or producer price indexes, will be determined in connection with the examination of the taxpayer's income tax return. The selection of a consumer or producer price index for a specific good to compute an inventory price index under paragraph (e)(3) is a method of accounting. A taxpayer desiring to change the selection of such a consumer or producer price index must secure the consent of the Commissioner as provided in § 1.446–1(e). In the case of such a change, any layers of inventory increments previously determined and the LIFO value of such increments shall be retained. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the inventory pool, the year of such change shall be used as the base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The base year costs of layers of increments in the pool at the beginning of the year of change shall be restated in terms of new base

year costs using the year of change as the new base year.

(C) *Other selection requirements.* Manufacturers, processors, wholesalers, jobbers, and distributors may select indexes from only *Producer Prices and Price Indexes.* Retailers may select indexes from either the *CPI Detailed Report* or *Producer Prices and Price Indexes,* but if equally appropriate indexes could be selected from either publication, a retailer using the retail inventory method must select the index from the *CPI Detailed Report* and a retailer not using the retail inventory method must select the index from *Producer Prices and Price Indexes.* If a retailer using the retail inventory method selects a price index from *Producer Prices and Price Indexes,* the selected index must be converted into a retail price index. If a retailer not using the retail inventory method selects an index from the *CPI Detailed Report,* the selected index must be converted into a cost price index. Manufacturers, processors, wholesalers, jobbers, and distributors, must convert selected indexes into cost price indexes. In the case of the *CPI Detailed Report,* indexes may be selected only from Table 3 (Consumer Price Index for All Urban Consumers: Food expenditure categories, U.S. city average) and Table 5 (Consumer Price Index for All Urban Consumers: Nonfood expenditure categories, U.S. city average). In the case of the *Producer Prices and Price Indexes,* indexes may be selected only from Table 6 (Producer prices and price indexes for commodity groupings and individual items), unless the taxpayer can demonstrate that the selection of an index from another *Producer Prices and Price Indexes* table would be more appropriate. In the case of a taxpayer using the retail inventory method, the selected index must be the index as of the last month of the taxpayer's taxable year. Taxpayers that do not use the retail inventory method must select indexes as of the month or months most appropriate to the taxpayer's method of determining the current-year cost of the inventory pool under paragraph (e)(2)(ii) of this section, or make a one-time binding election of an appropriate representative month during the taxable year. The election must be clearly set forth on Form 970 (see paragraph (e)(3)(v) of this section).

(iv) *Special rules for pools.* A retailer, wholesaler, jobber, or distributor computing an inventory price index in the manner provided by paragraph (e)(3) of this section may, at the option of the taxpayer, establish an inventory pool for any group of goods included within one of eleven general categories of consumer goods described in the *CPI Detailed Report.* The eleven categories are food and beverages, housing maintenance and repair commodities, fuels (other than gasoline), house furnishings and housekeeping supplies, apparel commodities, private transportation (including gasoline), medical care commodities, entertainment commodities, tobacco products, toilet goods and personal care appliances, and school books and supplies. Inventory pools that comprise less than 5 percent of inventory value may be combined to form a single miscellaneous inventory pool. If the resulting miscellaneous inventory pool itself comprises less than 5 percent of inventory value, such pool may be combined only with the largest inventory pool. See paragraphs (b), (c) and (d) of this section for additional rules relating to the establishment of pools. See also section 474 of the Code for rules relating to the use of a single pool by an eligible small business. Except as provided in paragraph (e)(3)(v) of this section, relating to the adoption or change of method of computing an inventory price index, the rules of paragraph (g)(1) and (2) of this section apply to a change in method of pooling.

(v) *Adoption or change of method.* The use of an inventory price index computed in the manner provided by paragraph (e)(3) of this section is considered a method of accounting. A taxpayer permitted to adopt or change to the dollar-value LIFO inventory method without first securing the consent of the Commissioner may also adopt the inventory price index computation method prescribed by paragraph (e)(3) incident to such adoption or change without first securing the consent of the Commissioner. In all other cases, a taxpayer may adopt or change to the inventory price index computation method prescribed by paragraph (e)(3) only after first securing the consent of the Commissioner as provided in § 1.446–1(e). However, in the case of a taxpayer not using the inventory price index computation method prescribed by paragraph (e)(3), the taxpayer may adopt or change to such method for the taxpayer's first or second taxable year beginning after December 31, 1981, without requesting the Commissioner's consent to such adoption or change. In addition, in such a case the taxpayer is not required to request the Commissioner's consent to a change in method of pooling incident to such adoption or change if the taxpayer is changing to a method of pooling authorized by paragraph (e)(3)(iv). In this case the rules of § 1.472–8(g) will apply. The inventory price index computation method provided by paragraph (e)(3) may be adopted and used only if the taxpayer indicates on a Form 970, or in such other manner as may be acceptable to the Commissioner, a listing of each inventory pool, the type of goods included in each pool, and the consumer or producer price index or indexes selected for each inventory pool. In the case of a taxpayer permitted to adopt or change to the inventory price index computation method without requesting the Commissioner's consent, the Form 970 shall be attached to the taxpayer's income tax return for the taxable year of such adoption or change. In other cases, the Form 970 shall be attached to a Form 3115 filed in accordance with § 1.446–1(e). Taxpayers must maintain adequate books and records of the use and computation of the inventory price index method in order to satisfy the requirements of § 1.472–2(h). Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer adopting or changing to the use of an inventory price index computed in the manner provided by paragraph (e)(3) is not required to demonstrate that the use of the double-extension method is impractical.

(vi) *Requirement incident to change.* In the case of a taxpayer using a method other than an inventory price index computed as prescribed by paragraph (e)(3) of this section to determine the LIFO value of a dollar-value inventory pool, any layers of inventory increments previously determined by such method and the LIFO value of such layers shall be retained if the taxpayer changes to the use of a price index computed as prescribed by paragraph (e)(3). Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the pool, the year of such change shall be used as the base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The base year costs of layers of increments in the pool at the beginning of the year of change shall be restated in terms of new base year cost, using the year of change as the new base year. See paragraph (f)(2) of this section for rules relating to a change to the dollar-value method from another method of pricing LIFO inventories.

* * * * *

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: March 1, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-7089 Filed 3-15-82; 8:45 am]

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26 CFR Parts 31 and 35

[T.D. 7813]

Employment Taxes; Voluntary Withholding From Sick Pay

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final Employment Tax Regulations (26 CFR Part 31) relating to voluntary withholding of income tax from sick pay. Changes to the applicable tax law were made by the Act of December 24, 1980 (Pub. L. 96-601). These regulations provide guidance to third party payors of sick pay, payees of sick pay, and employers of payees.

DATE: The regulations apply to sick pay payments made on or after May 1, 1981, by someone other than the employer for whom the payee performs services.

FOR FURTHER INFORMATION CONTACT: Barry L. Wold of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention CC:LR:T) (202-566-3828).

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1981, the **Federal Register** published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under sections 3402(o) and 6051(f) of the Internal Revenue Code of 1954 (46 FR 24595). On the same date, the **Federal Register** also published Temporary Employment Tax Regulations Under the Act of December 24, 1980 (Pub. L. 96-601) under sections 3402(o) and 6051(f) of the Internal Revenue Code of 1954 (46 FR 24553). A public hearing was held on August 11, 1981. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Response to Major Comments

Several comments requested that the deposit requirements of the regulations be clarified. Section 31.3402(o)-3(f) provides that the payor deposit amounts withheld under his own name and Employer Identification Number along with whatever amounts the payor withholds from his own employees. Employers report these amounts to employees on Forms W-2 that bear the employer's name and EIN. Concern was expressed about how these amounts would be reconciled. The final Form 941 of the year will contain details of the reconciliation procedure.

Another aspect of the regulations about which concern was expressed is the problems the statutory scheme presents to multiemployer plans under collective bargaining agreements. Two provisions have been added to the final regulations to ameliorate these problems. First, guidance has been provided as to the employer to whom these plans should provide the information reports. Second, an optional rule has been included to permit employers to designate the payor as the employer's agent for purposes of the reporting requirements of these regulations. Although primarily employers and plans in the collectively bargained multiemployer area were concerned about this issue, the regulation provides that any employer and payor may elect this treatment.

Some comments expressed the view that the standards for permanent and total disability are insufficiently clear. Section 31.3402(o)-3(h)(1)(i) of the final regulations states that if all amounts paid under a plan are described in the first sentence of section 105(d)(4), no amounts paid under that plan will be considered sick pay for purposes of these regulations. This narrower definition will lessen the burden upon payors—and thereby reduce their costs compared to complying with the definition in the temporary regulations—in determining whether amounts paid are sick pay or not, since payors will not need to make case-by-case determinations as to whether amounts paid are sick pay. Because withholding under these provisions is voluntary, a payee who determines that he is eligible for the partial exclusion of section 105(d) can reduce or eliminate withholding as his individual tax situation demands. A payee whose payments are subject to mandatory withholding under the terms of a collective bargaining agreement may stop that withholding if he is eligible for the partial exclusion under section 105(d). Because, however, some payors may have already acted in reliance upon the standards of the temporary regulations, the final regulations provide that a payor may, for 1981 only, opt to follow the standards of the temporary regulations.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

The principal author of these regulations in Barry L. Wold of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Adoption of Amendments to the Regulations

Accordingly, the Temporary Employment Tax Regulations Under the Act of December 24, 1980 (Pub. L. 96-601) (26 CFR Part 35) are deleted from the Code of Federal Regulations, and the following amendments are made to the Employment Tax Regulations (26 CFR Part 31):

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

Paragraph 1. A new § 31.3402(o)-3 is added and is inserted after § 31.3402(o)-2. New § 31.3402(o)-3 reads as follows:

§ 31.3402(o)-3 Extension of withholding to sick pay.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in paragraph (h)(2) of this section) of sick pay (as defined in paragraph (h)(1) of this section) may request the payor (as defined in paragraph (h)(3) of this section) of the sick pay to withhold income tax with respect to payments of sick pay made on or after May 1, 1981. If such a request is made, the payor must deduct and withhold as requested.

(b) *Manner of making request.* A payee who wishes a payor to deduct and withhold income tax from sick pay shall file a written request with the payor to deduct and withhold a specific whole dollar amount (subject to the limitations of paragraph (c) of this section) from each sick pay payment. The request shall be made on Form W-4P in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W-4P, payors may prepare and use a form the provisions of which are identical to those of Form W-

4P. The payee must include his social security account number in the request.

(c) *Amount requested to be withheld.* The payee shall request that the payor withhold a specific whole dollar amount. The specific whole dollar amount shall be at least $20 per weekly payment of sick pay. If the payee is paid sick pay computed on a daily basis, the specific whole dollar amount shall be at least $4 per daily payment of sick pay. If the payee is paid sick pay on a biweekly basis, the specific whole dollar amount shall be at least $40 per 2 week payment of sick pay. If the payee is paid sick pay on a semimonthly basis, the specific whole dollar amount shall be at least $44 per semimonthly payment of sick pay. If the payee is paid sick pay on a monthly basis, the specific whole dollar amount shall be at least $88 per monthly payment of sick pay. If the payee is paid sick pay on a basis other than weekly, daily, biweekly, semimonthly, or monthly, the specific whole dollar amount shall be the equivalent of at least $4 per day, assuming a 5 day work week of 8 hours per day (40 hours total) in each 7 day calendar week. In the case of a payment which is greater or less than a full payment, the amount withheld is to bear the same relation to the specific whole dollar amount requested to be withheld as such payment bears to a full payment. For example, assume an individual receives sick pay of $100 per week and requests that $25 per week be withheld for taxes. After 4 full weeks of absence, the individual returns to work on a Wednesday (having been absent on sick leave Monday and Tuesday). For the week the individual returns to work, the individual would be entitled to $40 of sick pay, $10 of which would be withheld for taxes. The payor may, at his option, permit the payee to request that the payor withhold a specific percentage from each payment. The specific percentage shall be at least 10 percent. If the payor so opts, the payor must also accept requests under the whole dollar method. If the amount requested to be withheld under either the whole dollar method or the optional percentage method reduces the net amount of a sick pay payment received by the payee to below $10, no income tax shall be withheld from that payment by the payor.

(d) *When request takes effect.* The payor must deduct and withhold the amount specified in the request with respect to payments made more than 7 days after the date on which the request is received by the payor. At the election of the payor, the request may take effect before this deadline.

(e) *Duration and termination of request.* A request under this section shall continue in effect until changed or terminated. The payee may change the request by filing a new written request that meets all of the requirements of paragraphs (b) and (c) of this section. The new request shall take effect as specified in paragraph (d) of this section and the old request shall be deemed terminated when the new request takes effect. The payee may terminate the request by furnishing the payor a signed written notice of termination containing both a request to terminate withholding and all the information contained in the request to withhold. This written notice of termination shall take effect with respect to payments made more than 7 days after the date on which the notice of termination is received by the payor. At the election of the payor, the request may take effect before this deadline.

(f) *Special rules.* For purposes of chapter 24 on subtitle C of the Internal Revenue Code of 1954 (relating to collection of income tax at source on wages) and of subtitle F of the Code (relating to procedure and administration), and the regulations thereunder—

(1) An amount which is requested to be withheld pursuant to this section shall be deemed a tax required to be deducted and withheld under section 3402.

(2) An amount deducted and withheld pursuant to this section shall be deemed an amount deducted and withheld under section 3402.

(3) The term "wages" includes the gross amount of a sick pay payment with respect to which there is in effect a request for withholding under this section. However, references to the definition of wages in section 3401(a) which are made in section 6014 (relating to election by the taxpayer not to compute the tax on his annual return) and section 6015(a) (relating to declaration of estimated tax by individuals) shall not be deemed to include any portion of such a sick pay payment.

(4) The term "employer" includes a payor with respect to whom a request for withholding is in effect under this section.

(5) The term "employee" includes a payee with respect to whom a request for withholding is in effect under this section.

(6) The term "payroll period" includes the period of accrual with respect to which payments of sick pay which are subject to withholding under this section are ordinarily made.

(g) *Statements required to be furnished to payees.* See section 6051(f) and the regulations thereunder for requirements relating to statements required to be furnished to payees.

(h) *Definitions.* (1)(i) The term "sick pay" means any payment made to an individual which does not constitute wages (determined without regard to section 3402(o) and this section), which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of personal injuries or sickness. The term "personal injuries or sickness" shall have the same meaning as ascribed thereto by section 105(a) and the regulations thereunder. The term "sick pay" does not include any amounts either excludable from gross income under section 104(a) (1), (2), (4) or (5) or section 105(b) or (c) or paid under section 3402(o)(1)(B). The term "sick pay" does not include amounts paid under a plan if all amounts paid under the plan are paid to individuals who are described in the first sentence of section 105(d)(4) (relating to the definition of permanent and total disability) and the regulations thereunder. Amounts paid under any other plan shall be deemed to be paid for a period during which the employee is temporarily absent from work. For sick pay paid in 1981 only, however, the payor may opt not to follow the rules of the two preceding sentences but to follow instead the rule that an employee is temporarily absent if his absence is not described in section 105(d)(4) (relating to the definition of permanent and total disability) and the regulations thereunder. An employer is not a party to the plan if the plan is a contract between only employees and a third party payor or the employer makes no contributions to provide sick pay benefits under the plan, even if the employer withholds amounts from the employees' salaries and pays the amounts over to the third party payor.

(ii) This subparagraph (1) may be illustrated by the following examples:

Example (1). Employee A works for P Company and Employee B works for Q Company. P Company has contracted with R Insurance Company for R to pay P's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Q Company has neither entered into such a contract, nor will it make such payments directly from it own funds. B consequently goes to S Insurance Company and purchases directly an insurance policy which will pay him the equivalent of his

normal wages when he is unable to work because of sickness or personal injury. Both A and B are subsequently temporarily absent from work on account of sickness or personal injuries. A receives payments from R and B receives payments from S. Neither the payments made by R to A nor the payments made by S to B constitute wages (determined without regard to section 3402(o) and this section). A may request that R withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are sick pay as defined in section 3402(o) and this section. B may not request that S withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are not paid pursuant to a plan to which Q Company is a party and thus are not sick pay as defined in section 3402(o) and this section.

Example (2). Employees C and D both work for T Company , which has contracted with U Insurance Company for U to pay T's employees for all sickness or injury claims Employee C is sick and out from work for a month. U pays C the equivalent of C's regular pay. Employee D loses his arm in an accident and U pays D $10,000. C may request that U withhold income taxes under section 3402(o) and this section from the payments he receives because the payments constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries. D may not request that U withhold income taxes from the payments he receives because the payments do not constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(2) The term "payee" means an individual who is a citizen or resident of the United States and who receives a sick pay payment.

(3)(i) The term "payor" means any person making a sick pay payment who is not the employer (as defined in section 3401 and in § 31.3401(d)–1 (except paragraph (f) thereof)) of the payee. If however the person making the payment is acting solely as an agent for another person, the term "payor" shall mean the other person and not the person actually making the payment.

(ii) This subparagraph (3) may be illustrated by the following examples:

Example (1). X Company contracts with Y Insurance Company for Y to pay X's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Y computes the amount to be paid and determines the date payment is to be made for each of X's employees. Y then instructs Z Bank to issue a check for that amount on that date. Y reimburses Z for the amount of the check plus Z's administrative costs. Under these circumstances, Z is the agent of Y and Y is the payor under section 3402(o) and this section.

Example (2). V Company contracts with W Company for W to pay V's employees the equivalent of their normal wages when they are temporarily absent from work on account of sickness or personal injury. Under the contractual arrangement, V advises W of the wages normally paid to each of V's employees. V tells W when an employee of V is temporarily absent from work on account of sickness or personal injury, and W computes the amount to be paid the employee and makes payments of sick pay to the employee during the period of the employee's absence. V subsequently reimburses W for the amount of those payments and pays W a fee for W's services. Under these circumstances, W is acting solely as the agent of V, and a payee may not request under section 3402(o) and these regulations that W withhold income taxes from his payments. However, see section 3401 and the regulations thereunder for the obligation of V to withhold income taxes from the payments that W makes as the agent of V, which are not excluded from income under section 105 and the regulations thereunder and which are wages under section 3401 and the regulations thereunder. See also § 31.3402(g)–1 (relating to supplemental wage payments) for the conditions under which a flat percentage rate of withholding may be used.

Example (3). Assume the same facts as in Example (2), except that the consideration for W's services is a set insurance premium rather than reimbursement for costs plus a fee. Under these circumstances W is the payor and is not acting solely as the agent of V. An employee of V to whom W makes payments under the agreement may request under section 3402(o) and the regulations thereunder that W withhold income taxes from those payments.

(i) *Special rules for sick pay paid pursuant to certain collective-bargaining agreements.* (1) Special rules (enumerated in subparagraph (2)) apply to sick pay where all of the following tests are met.

(i) The sick pay must be paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers.

(ii) The agreement must contain a provision that section 3402(o)(5) is to apply to sick pay paid pursuant to the agreement.

(iii) The agreement must contain a provision for determining the amount to be deducted and withheld from each payment of sick pay.

(iv) The social security number of the payee must be furnished to the payor. The agreement may provide that the employer will furnish this or the payee may furnish his social security number directly to the payor.

(v) The payor must be furnished with information that is necessary for the payor to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld. The agreement may provide that the employer will furnish this information directly to the payor.

(2) The following special rules apply to sick pay where all of the tests of subparagraph (1) are met.

(i) The requirement of section 3402(o)(1)(c) and this section that a request for withholding be in effect does not apply.

(ii) The amount to be deducted and withheld from the sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not however apply—

(A) To payments enumerated in section 3402(n) (relating to employees incurring no income tax liability) and the regulations thereunder, or

(B) To payments made to a payee more than 7 days after the date that the payor receives a statement from the payee that the payee expects to claim an exclusion from gross income under section 105(d). Such statement must include adequate verification of disability. A certificate from a qualified physician attesting that the employee is permanently and totally disabled (within the meaning of section 105(d)) shall be deemed to constitute adequate verification. If the payor receives such a statement, the payor shall not withhold any income tax from the payments made to the payee, regardless of the provisions of the collective bargaining agreement. This exception from withholding does not affect the requirements of § 31.6051–3.

Par. 2. A new § 31.6051–3 is added and is inserted after § 31.6051–2. New § 31.6051–3 reads as follows:

§ 31.6051–3 Statements required in case of sick pay paid by third parties.

(a) *Statements required from payor.* (1) Every payor of sick pay shall furnish to the employer of the payee of the sick pay a written statement. The written statement must contain the following information:

(i) The name and, if there is withholding from sick pay under section 3402(o) and the regulations thereunder, the social security account number of the payee,

(ii) The total amount of sick pay paid to the payee during the calendar year, and

(iii) The total amount (if any) deducted and withheld from sick pay under section 3402(o) and the regulations thereunder.

The statement must be furnished to the employer on or before January 15 of the year following the calendar year in which any sick pay was paid. (2) These reporting requirements are in lieu of the requirements of sections 6051(a) (relating to written statements for

employees) and 6041 (relating to information returns). Statements required to be furnished by this paragraph shall be treated as statements required under section 6051 to be furnished to employees for purposes of sections 6674 (relating to fraudulent statement or failure to furnish statement to employee) and 7204 (relating to fraudulent statement or failure to make statement to employees).

(3) A multiemployer plan paying sick pay pursuant to a collectively bargained agreement may furnish the statement required to be furnished by this paragraph, which shall include the total amount of sick pay paid to the employee under the plan regardless of the identity or number of employers for whom the employee worked during the calendar year under the plan, to one of the following:

(i) The employer for whom the employee worked the most hours during the calendar year for which the statement is to be furnished,

(ii) The employer for whom the employee first worked during such year,

(iii) The employer for whom the employee last worked during such year,

(iv) The employer for whom the employee worked immediately preceding his absence for which sick pay was paid,

(v) The employer for whom the employee worked immediately following his absence for which sick pay was paid,

(vi) The employer designated through the operation of a specific clause of the collective bargaining agreement, or

(vii) The employer designated through the operation of a specific system of designation chosen by the payor.

(b) *Information required to be furnished by employer.* Every employer of a payee of sick pay who receives a statement under paragraph (a) from a payor of sick pay shall furnish to each payee of sick pay a written statement, which must be furnished on Form W–2. The written statement must contain the following information:

(1) All of the information required to be furnished under paragraph (a),

(2) The name, the address, and the Employer Identification Number (EIN) of the employer,

(3) The words "sick pay", which shall be written in the box labelled "Employer's use", and

(4) If any portion of the sick pay is excludable from gross income under section 104(a)(3), the amount of the portion which is not so excludable and of the portion which is so excludable. Only sick pay payments includable in gross income shall be reported in the box labelled "Wages, tips, other compensation" on Form W–2. Any amount excludable from gross income under section 104(a)(3) shall be reported in the box labelled "Employer's use" on Form W–2 and any amount so reported shall be described as "Nontaxable". The information required to be furnished by this paragraph may be furnished either on the same Form W–2 that is required to be furnished under section 6051(a) or on a separate Form W–2. To the extent practicable, this statement should be furnished to the payee along with the statement (if any) required under section 6051(a) (relating to written statements for employees). The statement must be furnished to the payee on or before January 31 of the year following the calendar year in which any sick pay was paid. The employer shall file copy A of Form W–2 and Form W–3 with the Social Security Administration in accordance with section 6051(d) (relating to statements to constitute information returns) and the regulations thereunder.

(c) *Optional rule.* The payor and the employer may at their option enter into an agency agreement valid under local law whereby the employer designates the payor to be the employer's agent for purposes of fulfilling the requirements of this section. This agreement must specify what portion, if any, of the sick pay is excludable from gross income under section 104(a)(3). If they enter into such an agreement, the payor shall not provide the statement required by paragraph (a) but shall instead furnish statements that meet all of the requirements of paragraph (b), except that the agreement must provide that the payor will furnish the statements with the payor's, rather than the employer's name, address, and Employer Identification Number (EIN) if "Sick Pay Statement Furnished under an Agency Agreement with Your Employer" appears in the box labelled "Employer's Use" on Form W–2. Paragraph (a)(2) remains applicable to statements furnished under this paragraph. In the case of sick pay paid under a multiemployer plan pursuant to a collectively bargained agreement, an amendment to either the multiemployer plan or the collectively bargained agreement designating the payor to be the employers' agent for purposes of fulfilling the requirements of this section shall be deemed an agency agreement that fulfills the requirements of the first sentence of this paragraph.

(d) *Definitions.* For purposes of this section, the terms "payor", "payee", and "sick pay" shall have the same meaning as ascribed thereto in section 3402(o) and the regulations thereunder. For purposes of this section, the term "employer" shall have the same meaning as ascribed thereto in section 3401(d) and the regulations thereunder, except that the term "employer" shall not include the payor for purposes of this section.

(e) *Additional requirements.* (1) Statements furnished to payees under this section must also comply with all requirements of section 6051 (c) and (d) and the regulations thereunder.

(2) The provisions of § 1.9101–1 (relating to permission to submit information required by certain returns and statements on magnetic tape) shall be applicable to the information required by this section to be furnished on Form W–2 if the employer properly complies with those provisions.

(3) The provisions of section 6109 (relating to identifying numbers) and the regulations thereunder shall be applicable to Form W–2 and to any payee of sick pay to whom a statement on Form W–2 is required by this section to be furnished. Thus the employer must include the social security account number of the payee on all Forms W–2.

(f) *Effective date.* The provisions of this section shall apply to payments of sick pay made on or after May 1, 1981.

(g) *Transitional rule.* Payors may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on the same statement required to be furnished under paragraph (a) as is used to report sick pay paid to a payee on or after May 1, 1981. If the payor reports on the statement required to be furnished under paragraph (a), he shall not report sick pay paid after December 31, 1980, and before May 1, 1981, on Form 1099, if otherwise required to do so. If no sick pay is paid on or after May 1, 1981, the payor may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on the statement required to be furnished under paragraph (a). If he reports on the statement required to be furnished under paragraph (a), he shall not report sick pay paid on Form 1099, if otherwise required to do so.

PART 35—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ACT OF DECEMBER 24, 1980 (Pub. L. 96–601)

§§ 35.1 and 35.2 [Removed]

Par. 3. Sections 35.1 and 35.2 and Part 35 are hereby removed.

(Secs. 3402(o), 7805, Internal Revenue Code of 1954 (94 Stat. 3495, (26 U.S.C. 3402(o)); 68A Stat. 917 (26 U.S.C. 7805)))

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 8, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 82-7100 3-15-82; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disclosure of Loan Guaranty Information

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulation which governs the release of information from loan guaranty files. The revised regulation is designed to assure compliance with the Freedom of Information Act, the Privacy Act, and the Veterans' Rehabilitation and Education Amendments of 1980.

EFFECTIVE DATE: March 10, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. George Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: On September 15, 1981, the VA published for comment in the **Federal Register** (46 FR 45785), a proposed revision of § 1.512, relating to the release of information from loan guaranty files.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation. No written comments have been received. The proposed regulation is hereby adopted without change and is set forth below.

The Administrator hereby certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The regulation should have no effect upon small government jurisdictions, small organizations, or small businesses. The regulation is designed to assure VA compliance with existing statutory provisions relating to the release of information from loan guaranty files. Any person who desires additional information concerning the reasons for this revision should review the Supplementary Information contained in the Proposed Regulation published on September 15, 1981 (46 FR 45785).

The regulation has been reviewed pursuant to Executive Order 12291, and has been found to be a nonmajor regulation. The regulation is for internal agency guidance and should have a nonmajor impact on the public and private sectors protected by the Executive Order.

These amendments are promulgated under authority granted to the Administrator by sections 210(c), 1819(g), 1820(a) and 3301(c), (e), and (h) of title 38, United States Code. The official program numbers and titles of the VA programs affected by this action as set forth in OMB Circular A-89, Catalog of Federal Domestic Assistance, are: (1) 64.106, Specially Adapted Housing for Disabled Veterans; (2) 64.113, Veterans Housing—Direct Loans and Advances; (3) 64.114, Veterans Housing—Guaranteed and Insured Loans; (4) 64.118, Veterans Housing—Direct Loans for Disabled Veterans, and (5) 64.119, Veterans Housing—Mobile Home Loans.

The proposed changes to § 1.512 are deemed proper and are hereby approved.

Approved: March 10, 1982.

By direction of the Administrator.

Charles T. Hagel,

Deputy Administrator.

PART 1—GENERAL PROVISIONS

38 CFR 1.512 is revised to read as follows:

§ 1.512. Disclosure of loan guaranty information.

(a) The disclosure of records or information contained in loan guaranty files is governed by the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the confidentiality provisions of 38 U.S.C. 3301, and the provisions of 38 CFR 1.500-1.584. In addition, the release of names and addresses and the release of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems provided that the individual identifiers of the veteran-purchaser(s) or dependents are deleted prior to release of such documents. However, individual identifiers may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier. (38 U.S.C. 3301(a), (c))

(2) Individual identifiers of veteran purchasers or dependents may be disclosed when disclosure is made to the following:

(i) The individual purchasing the property;

(ii) The current owner of the property;

(iii) The individual that requested the appraisal or report;

(iv) A person or entity which is considering making a loan to an individual with respect to the property concerned; or

(v) An attorney, real estate broker, or any other agent representing any of these persons. (38 U.S.C. 3301(c), (h)(2)(D).)

(c)(1) The Administrator may release the name, address, or both, and may release other information relating to the identity of an applicant for or recipient of a Veteran's Administration-guaranteed, insured, or direct loan, specially adapted housing grant, loan to finance acquisition of Veterans' Administration-owned property, release of liability, or substitution of entitlement to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies for any of the purposes specified in paragraph (c)(2) of this section.

(2) A release may be made under paragraph (c)(1) of this section:

(i) To enable such parties to provide the Veterans' Administration with data which assists in determining the creditworthiness, credit capacity, income or financial resources of the applicant for or recipient of loan guaranty administered benefits, or verifying whether any such data previously received is accurate; or

(ii) To enable the Administrator to offer for sale or other disposition any loan or installment sale contract. (38 U.S.C. 3301(h)(2)(A), (B), (C).)

(d) Upon request, the Administrator may release information relating to the individual's loan transaction to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords,

utility companies and governmental agencies where necessary in connection with a transfer of information on the status of a Veterans' Administration loan account to persons or organizations proposing to extend credit or render services or other benefits to the borrower in order that the person or organization may determine whether to extend credit or render services or other benefits to the borrower. Such releases shall be made only if the person or organization seeking the information furnishes the individual's name, address or other information necessary to identify the individual. (38 U.S.C. 3301(e), (h)(2)(A) and (D).)

(e) The Administrator shall maintain information in the loan guaranty file consisting of the date, notice and purpose of each disclosure, and the name and address of the person to whom the disclosure is made from the loan guaranty files. (38 U.S.C. 3301(h)(2)(D), 5 U.S.C. 552a(c).)

[FR Doc. 82-7043 Filed 3-15-82; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AH300gWV; A-3-FRL-2045-1]

Approval of Revision to the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the West Virginia State Implementation Plan (SIP). The revision consists of West Virginia's plans for attaining the secondary National Ambient Air Quality Standard (NAAQS) for total suspended particulate (TSP).

EFFECTIVE DATE: April 15, 1982.

ADDRESSES: Copies of the West Virginia plans for attaining the secondary NAAQS for TSP, as well as accompanying documents, are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch (3AW13), Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Mr. Raymond D. Chalmers

West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311, Attn: Mr. Carl Beard

Public Information Reference Unit, EPA Library, 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: Mr. Raymond D. Chalmers at the address for EPA Region III above or telephone (215) 597-8309.

SUPPLEMENTARY INFORMATION: Governor J. D. Rockefeller IV of West Virginia submitted these plans for attaining the secondary NAAQS for TSP to EPA on November 14, 1980 and requested that EPA approve the incorporation of the plans into the West Virginia SIP. The plans provide for attaining the secondary NAAQS for TSP in the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region (AQCR), the Tygart Magisterial District in Parkersburg, and in Kanawha County and Valley Magisterial District in Fayette County.

West Virginia's plans for these areas are similar in several respects. West Virginia states in all three plans that it believes it is not yet appropriate to include in its SIP new regulations for bringing about attainment of the secondary NAAQS for TSP. The State believes it must do additional studies to identify the sources causing its nonattainment problems and to establish what control measures these sources should be required to implement. West Virginia states that the need for further study has arisen because its nonattainment problems appear to be caused mainly by fugitive sources, sources for which little data are available.

West Virginia now has a regulation in effect, Regulation XVII, which permits the State to selectively control fugitive sources. West Virginia intends to use Regulation XVII as its authority for controlling fugitive sources that its studies indicate are contributing to the State's TSP nonattainment problems. However, West Virginia has not submitted Regulation XVII to EPA for inclusion in the West Virginia SIP. At this time, West Virginia intends to use this regulation only for experimental purposes in conjunction with the overall TSP study.

West Virginia states in its plan for the Steubenville-Weirton-Wheeling AQCR that it will bring the AQCR into attainment with the secondary NAAQS for TSP by December 31, 1986, by requiring additional control of fugitive emissions. The State says that it will determine what new control measures are needed using the findings of a recently completed report etitled "Interregional TSP Study for the Steubenville-Weirton-Wheeling Interstate Air Quality Control Region." EPA Region III can supply copies of this report.

West Virginia's plan for attaining the secondary NAAQS for TSP in the Steubenville-Weirton-Wheeling AQCR is actually an expanded version of its plan for attaining the primary NAAQS. West Virginia modified some of the data contained in its primary plan when it submitted its secondary plan. The modified data consists of information on TSP concentrations and emissions. West Virginia modified this data to correct certain errors. EPA has noted that West Virginia corrected data on TSP air quality and emissions in the main text of its plan but not in its appendices. West Virginia has agreed to review the appendices and revise them where necessary.

West Virginia states in its plans for the Tygart Magisterial District and for Kanawha County and Valley Magisterial District in Fayette County that it will bring these areas into attainment with the secondary NAAQS for TSP by December 31, 1985. The State says that it will adopt and implement by July 1, 1984 all new requirements needed to bring about attainment. The State commits to carry out studies to determine what additional emission controls are needed.

When EPA approved West Virginia's plans for attaining primary TSP standards at 45 FR 54042, August 14, 1980, EPA established certain conditions West Virginia had to meet in order to keep the approval of its primary TSP plans in effect. Those conditions remain in effect and are unchanged by this rulemaking action.

EPA has reviewed West Virginia's revision and has determined that it meets the requirements for approval contained in Section 110 of the Clean Air Act and 40 CFR Part 51. EPA proposed approval of the revision in the **Federal Register** of November 6, 1981 (46 FR 55123) and subsequently received no comments regarding it. Accordingly, EPA is approving the revision.

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

Pursuant to the provision of 5 U.S.C. Section 6.05(b), I hereby certify 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. 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: March 9, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of West Virginia was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart XX—West Virginia

1. In § 52.2520 Identification of Plan is amended by adding § 52.2520(c)(17).

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(17) West Virginia's plans for attaining the secondary National Ambient Air Quality Standard for total suspended particulate submitted by the Governor of West Virginia on November 14, 1980.

[FR Doc. 82-7072 Filed 3-15-82; 8:45 am]

BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 101-11

[FPRM Amendment B-49]

Disposition of Federal Records; Transfer of Records to a Federal Records Center

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending its regulations to lengthen certain deadlines in the procedures relating to the accessioning of records by the Federal records centers. The requirement that agencies transfer records to a records center within 30 calendar days after return of the Standard Form 135 to the agency has caused some problems. For Shipments not received within that timeframe, the centers normally would return the Standard Form 135, asking the agency to resubmit before shipping the records. For overseas shipments as well as for those in the Washington metropolitan area for which a records pickup service is provided, this 30-day deadline was not realisitc and caused additional paperwork for both the agencies and records centers. Extension of the deadline to 90 calendar days will alleviate these problems.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. George N. Scaboo, Acting Assistant Archivist for Federal Records Centers (202–724–1614).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the lease net cost to society.

PART 101-11—RECORDS MANAGEMENT

Section 101–11.410–2(f) is revised to read as follows:

§ 101.11.410–2 Procedures for transfers to Federal records centers.

* * * * *

(f) The physical transfer of records to a records center should be accomplished as soon as possible after the agency has received the annotated copy of the Standard Form 135. If NARS has not received the shipment within 90 days, it will return the SF 135 to the agency. The agency will then have to resubmit the accessioning paperwork.

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: February 24, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-7001 Filed 3-15-82; 8:45 am]

BILLING CODE 6820-26-M

41 CFR Part 101-41

[FPMR Amdt. G-55]

Transportation Documentation and Audit; Quantity (Bulk) Ticket Purchases

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations to revise the current dollar limitations on quantity (bulk) ticket purchases. These revised procedures increase the dollar limit for bulk ticket purchases and will permit Government agencies to make greater use of reduced fares when purchased in bulk quantities. The cost of preparing U.S. Government Transportation Requests for repetitive regular fare travel will also be reduced.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT:

John W. Sandfort, Chief, Reports and Procedures Branch, Office of Transportation Audits (202–275–0664).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweighs the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

A notice of proposed rulemaking was published in the **Federal Register** of September 28, 1981 (46 FR 47472), inviting comments for 30 days ending October 28, 1981. No comments were received.

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

Section 101–41.203–3(b)(2) is revised to read as follows:

§ 101–41.203–3 Quantity (bulk) ticket purchases.

* * * * *

(b) * * *

(2) Each one-way or round trip single fare for transportation does not exceed $250 exclusive of Federal transportation tax; and

* * * * *

(31 U.S.C. 244 and 40 U.S.C. 486(c))

Dated: February 24, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-7002 Filed 3-15-82; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6198

[ORE-013683]

Oregon; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 4448 in part as to 40 acres of land withdrawn for reclamation purposes. This action will restore the land to operation of the mining laws. The land remains withdrawn from disposition under the public land laws for multiple use management.

EFFECTIVE DATE: April 13, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4448 of June 14, 1968, which withdrew the following described land for use by the Bureau of Reclamation for reclamation purposes in connection with the Umpqua River Project, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

Umpqua River Project

T. 29 S., R. 7 W.,
Sec. 20, NW¼NE¼.

The area described contains 40 acres in Douglas County.

2. At 10 a.m. on April 13, 1982, the land will be open to location under the United States mining laws. The land has been and continues to be open to applications and offers under the mineral leasing laws.

3. The land is withdrawn for multiple use management by Public Land Order No. 5490 of February 12, 1975, and therefore remains segregated from operation of the public land laws generally.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 8, 1982.

[FR Doc. 82-7035 Filed 3-15-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6200

[NM-51869-OKLA]

Oklahoma; Restoration of Lands to Ownership of Wichita and Affiliated Bands of Indians (Caddo Tribe and the Absentee Band of Delaware Indians of Caddo County)

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This public land order will terminate the withdrawal of 58.13 acres of ceded public land and restore the lands to the ownership of the Wichita and Affiliated Bands of Indians.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Fred O'Ferrall, New Mexico State Office, 505-988-6110.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in Section 3 of the Act of June 18, 1934, 25 U.S.C. 463 (1970), and pursuant to recommendations of the Tribal Council and the Deputy Assistant Secretary of Indian Affairs, and a finding of the Secretary of the Interior that such action is in the public interest, it is ordered as follows:

The following described land, ceded by the Wichita and Affiliated Bands of Indians (Caddo Tribe and the Absentee Band of Delaware Indians of Caddo County, Okla.), to the United States pursuant to agreement of June 4, 1891, ratified by the Act of March 2, 1895, 28 Stat. 876, 894-898, having been reserved for use by the Bureau of Indian Affairs for school purposes for the Riverside Indian School and being now not needed for such use, is hereby restored to tribal ownership for use and benefit of the Wichita and Affiliated Bands of Indians (Caddo Tribe and the Absentee Band of Delaware Indians of Caddo County, Okla.), subject to valid existing rights:

Indian Meridian

Township 7 North, Range 10 West,

Sec. 9, a portion of Lot 2, more particularly described as: Beginning at a point 340.69 feet South of the East ¼ corner of said Section 9; thence S. 88°04'50" W., a distance of 320.00 feet; thence South 400.50 feet; thence West 822.94 feet; thence S. 29°22' E., a distance of 284.60 feet; thence S. 14°52' E., a distance of 331.97 feet; thence N. 89°57' E., a distance of 917.73 feet;thence N. 00°01'02" E., a distance of 979.31 feet; to the point of beginning, 16.16 acres.

A portion of Lot 3, more particularly described as: Beginning at a point which is S 00°01'02" W., 340.69 feet and S. 88°04'50" W., 2035.90 feet from the East ¼ corner of said Section 9; thence S. 88°04'50" W., a distance of 607.13 feet; thence S. 00°02'43" W., a distance of 1373.46 feet; thence N. 48°30'03" E., a distance of 336.87 feet; thence N. 40°40' E., a distance of 500.19 feet; thence N. 25°40' E., a distance of 260.09 feet; thence N. 08°53' E., a distance of 240.06 feet; thence N. 33°13'05" E., a distance of 219.26 feet; thence North 136.12 feet to the point of beginning, 16.24 acres.

Sec. 10, that part of the N½ N½ SW¼ and N½ S½ N½ SW¼ of section 10 lying West of the West right-of-way line of U.S. Highway 281 (less 5.25 acres described by metes and bounds heretofore restored to tribal ownership pursuant to 34 FR 16065), 25.73 acres.

The area described aggregates 58.13 acres in Caddo County.

This order is subject to the following reservation for access and utility easement purposes:

A strip of land, 39.39 feet in width, being 9.39 feet to the left and 30 feet to the right of a centerline described as: Beginning at a point which is S. 00°01'02" W., 310.69 feet from the West ¼ corner of Section 10, T. 7 N., R. 10 W.: thence N. 88°41'47" E., a distance of approximately 1569 feet to a point of ending, said point being U.S. Highway 281.

Also, subject to any rights-of-way and/or easements of record necessary for the maintenance, service, repair and reconstruction of sewer, telephone, and other utility lines.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 8, 1982.

[FR Doc. 82-7041 Filed 3-15-82; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 47, No. 51
Tuesday, March 16, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A19]

Milk in the Chicago Regional Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Chicago Regional order that have been proposed by fourteen dairy farmer cooperative associations. The proposals would revise the performance standards under which supply plants qualify for pooling. The cooperative associations contend that the requested order changes are needed to reflect changed marketing conditions and to insure orderly marketing in the Chicago Regional area.

DATE: The hearing will convene March 30, 1982.

ADDRESS: The hearing will be held at the Quality Inn, 4916 East Broadway, Madison, Wisconsin 53716.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202/447-7311.

SUPPLEMENTARY INFORMATION: This action is exempt from the requirements set forth in Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Quality Inn, 4916 East Broadway, Madison, Wisconsin 53716 beginning at 9:30 a.m. (local time) on March 30, 1982, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

The hearing is called 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).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Beginning January 1, 1981, actions under the Federal milk order program became subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to the proposals.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Producers Cooperative

Proposal No. 1

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

Revise § 1030.7(b) to read as follows:

§ 1030.7 Pool plant.

* * * * *

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped and physically unloaded into plants described in paragraph (b)(2) as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13 but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 25 percent for September, 30 percent for each of the months of October and November, and 20 percent for all other months, subject to the following additional conditions:

* * * * *

Proposal No. 2

Evidence will be presented pursuant to § 1030.7(b)(5) to establish that the supply plant shipping percentages and diversion allowances should be adjusted in an amount up to 10 percentage points to prevent uneconomic shipments.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from the Market Administrator, Robert G. Thomas, Building A, Suite 200, 800 Roosevelt Road, Glen Ellyn, Illinois 60137 or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)

Office of the Market Administrator, Chicago Regional marketing area

Procedural matters are not subject to the above prohibition and may be discussed at any time.,

Signed at Washington, D.C., on March 10, 1982.

William T. Manley,

Deputy Administrator Marketing Program Operations.

[FR Doc. 82-7097 Filed 3-15-82; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1425

[Amdt. No. 8]

Cooperative Marketing Associations: Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing an amendment to the regulations governing cooperative marketing associations eligibility requirements for price support with which cooperative marketing associations must comply in order to participate in authorized CCC price support programs. The proposed amendment would change the amount of capital interest in the cooperative that must be owned by its active producer members and its member cooperatives which are owned and controlled by their active producer members from an amount constituting more than 50 percent of the capital of the cooperative to an amount constituting more than 50 percent of the allocated capital of the cooperative.

DATES: Written comments must be received on or before May 14, 1982 in order to be assured of consideration.

ADDRESS: Send comments to Director, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Cooperative Section, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7874. A draft Regulatory Impact Analysis is available from Richard M. Ackley.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Secretary's Memorandum 1512-1 and Executive Order 12291, and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies is: Title—Commodity Loans and Purchases: Number 10.051; as found in the Catalog of Federal Domestic Assistance.

This proposed action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

The regulations governing the eligibility of cooperative marketing associations to receive requirements price support presently require that an approved cooperative be owned and controlled by its active producer members and its member cooperatives which are owned and controlled by their active producer members. This requirement is partially met when a cooperative establishes that the active members own more than 50 percent of the capital interest in the cooperative (i.e., stock, revolving fund certificates, book credits, or other equity interest).

Such a requirement was designed to ensure that approved cooperatives act in the best interest of its active members in relation to other equity owners, such as inactive members and nonmembers.

Many cooperatives routinely add to retained earnings or other unallocated reserve accounts due to requirements of their bylaws or decisions of their board of directors. To the extent that unallocated reserve account grow, it becomes increasingly difficult for cooperatives to meet the equity ownership requirement of CCC's price support regulations. However, there is no significant change in active membership representation in a cooperative's decisionmaking because the reserve accounts are unallocated and do not represent the ownership of members, nonmembers, or others. In addition, membership voting on cooperative matters is normally based on the one member-one vote concept and is not based on equity ownership. Therefore, the present equity ownership requirement in the regulations, while becoming increasingly stringent, does not contribute to the desired objectives of the price support program.

Thus, it is proposed that the CCC price support regulations governing cooperative marketing associations be amended to change the amount of capital interest in a cooperative which must be owned by its active producer members and its member cooperatives which are owned or controlled by their active producer members.

Proposed Rule

PART 1425—COOPERATIVE MARKETING ASSOCIATION

Accordingly, it is proposed that the regulations at 7 CFR 1425.4(a) be revised to read as follows:

§ 1425.4 Ownership and control.

* * * * *

(a) *Ownership.* The cooperative must establish that its active producer members and its member cooperatives which are owned and controlled by their active producer members, own a capital interest in the cooperative (i.e., stock, revolving fund certificates, book credits, or other equity interest) constituting more than 50 percent of the allocated capital of the cooperative. Ownership of a member cooperative by its active members shall also be determined in accordance with the provisions of this paragraph (a). In determining the requisite capital interest of active producer members and member cooperatives, the following shall be disregarded:

(1) The capital interest of any such member in excess of 10 percent of the capital of the cooperative; and

(2) The capital interest acquired by any such member as a result of a loan unless such member is obligated to repay the loan within a reasonable period of time.

(Secs. 4, and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c); secs. 101, 103, 105A, 107A, 201, 301, 401, 63 Stat. 1051, as amended, (7 U.S.C. 1441, 1444(f), 1444c, 1445b, 1446, 1447, 1421))

Signed at Washington, D.C. on March 9, 1982.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-7102 Filed 3-15-82; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1701

Advance Notice of Proposed Revision of REA Bulletin 120-1, "Development, Approval, and Use of Power Requirements Studies"

AGENCY: Rural Electrification Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: REA is reviewing Bulletin 120-1, "Development, Approval, and Use of Power Requirements Studies," to consider revised procedures and guidelines for the development and maintenance of up-to-date forecasts. Public comments are invited.

DATE: Public comments must be received by REA no later than April 15, 1982.

ADDRESS: Submit written comments to Mr. Joseph R. Binder, Director, Environmental and Energy Requirements Division, Rural Electrification Administration, Room 2861, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald O. Stephens, Chief, Energy Forecasting Branch, Environmental and Energy Requirements Division, Room 2863, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8446.

SUPPLEMENTARY INFORMATION: REA has been studying various methodologies currently used for load forecasting in the electric industry. REA has also been working with the Electric Power Research Institute (EPRI), Oak Ridge National Laboratory, and others in the development of methods and better use of information for rural electric system load forecasting.

This program is listed in the Catalog of Federal Domestic Assistance as *10.850—Rural Electrification Loans and Loan Guarantees.* Further public comment will be solicited when the proposed rule is published.

Dated: March 9, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-6992 Filed 3-15-82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811 0194]

Broward County Medical Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Florida medical association, among other things, to cease inhibiting competition among health care providers by restricting its members from soliciting patients; advertising fees and services; and by declaring such activities unethical. The association would be required to remove from its code of ethics, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order would also require that the association take no formal action against a party charged with violating an ethical standard without first providing that party with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of ten years, the association would be required to provide each new member with a copy of the order.

DATE: Comments must be received on or before May 14, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, Arthur N. Lerner, Washington, D.C., (202) 724-1303.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 811 0194]

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Broward County Medical Association (BCMA), a corporation, and it now appearing that BCMA is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between BCMA, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. BCMA is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its mailing address at 2200 South Andrews Avenue, Fort Lauderdale, Florida 33316.

2. BCMA admits all of the jurisdictional facts set forth in the draft of complaint here attached.

3. BCMA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify BCMA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by BCMA that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's rules, the Commission may, without further notice to BCMA, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to BCMA's address stated in this agreement shall constitute service. BCMA waives any right it may have to any other manner of service. The complaint attached hereto and the Commission's Opinion in "American Medical Association," 94 F.T.C. 701 (1980) (hereinafter *"AMA"),* may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The parties understand that "AMA" is presently before the United States Supreme Court on writ of certiorari, and that one of the questions presented to the Supreme Court in "AMA" is whether the Commission properly determined the American Medical Association and respondent constituent state and county medical societies to be "corporations" as that term is defined in Section 4 of the Federal Trade Commission Act. It is agreed that in the event the Supreme Court finds that the Commission did not properly determine the "AMA" respondents to be "corporations" and that the Commission thereafter issues a Final Order dismissing the complaint in "AMA" on the ground that the respondents are not "corporations," then the Commission shall dismiss the complaint in this proceeding, without prejudice, and withdraw this consent agreement and order. As used herein, the term "Final Order" means an order or opinion of the Federal Trade Commission which has become final in accordance with Section 5(g)–(k) of the Federal Trade Commission Act, 15 U.S.C. 45 (g)–(k).

8. BCMA has read the proposed complaint and order contemplated hereby. It understands that when the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. BCMA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

For purposes of this order, the following definition shall apply:

A. "BCMA" means respondent Broward County Medical Association, its delegates, trustees, councils, committees, Board of Censors, officers, representatives, agents, employees, successors and assigns.

II

It is ordered, That BCMA shall cease and desist from, directly or indirectly, or through any corporate or other device:

A. Restricting, regulating, impending, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of physicians' services, or of information about physicians' services, facilities or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. Restricting, regulating, impending, declaring unethical, interfering with, or advising against the solicitation, though advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier, telephone company or any other non-governmental organization to take any of the actions prohibited by this part.

Nothing contained in this part shall prohibit respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III

It is further ordered, that BCMA shall cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

A. Reasonable written notice of the allegations against him or her;

B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and

C. The written findings or conclusions of respondent with respect to such allegations.

IV

It is further ordered, That BCMA shall:

A. For a period of ten years, provide each new member of BCMA with a copy of the complaint and this Order at the time the member is accepted into membership;

B. Within sixty (60) days after the Order becomes final, publish a copy of the complaint and this Order with such prominence as feature articles are regularly published in the BCMA "Record" or in any successor publications;

C. Within ninety (90) days after this Order becomes final remove from its "Code of Ethics," its constitution and bylaws, and any other existing policy statements or guidelines of respondent, any provision, interpretation or policy statement which is inconsistent with Part II of this Order, and within one hundred and twenty (120) days after this Order becomes final, publish in the BCMA "Record" or in any successor publications the revised versions of such documents, statements, or guidelines;

D. Within one hundred and twenty (120) days after this Order becomes final, file a writtten report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;

E. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any of its members; and

F. Within one year after this Order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any

advice or interpretations rendered with respect to advertising, or solicitation involving any of its members.

V

It is further ordered, That BCMA shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation of association which may affect compliance obligations arising out ot this Order.

Broward County Medical Association, Docket No. 811 0194

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Broward County Medical Association ("BCMA").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will determine whether it should withdraw the agreement or make final the agreement's proposed order.

The Complaint. A complaint prepared for issuance by the Commission along with the proposed order alleges that BCMA has acted as a combination of at least some of its members or has conspired with at least some of its members to restrain competition among medical doctors in Broward County, Florida, by prohibiting its members from truthfully advertising their fees and services to the public and from otherwise soliciting patients' business, and by coercing individual members into abandoning their efforts to truthfully advertise and to otherwise solicit patients' business. These activities are alleged to be unfair methods of competition or unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

According to the complaint, BCMA is a professional association formed to represent the interests of physicians who practice in Broward County. It further asserts that BCMA has approximately 1500 members, constituting a substantial majority of the physicians in Broward County. The complaint further asserts that members of BCMA are engaged in the business of providing medical health care services for a fee and that, except to the extent that competition has been restrained as alleged in the complaint, BCMA members have been and are now in competition among themselves and with other physicians.

The complaint alleges that, in furtherance of the combination or conspiracy, BCMA adopted and implemented written and unwritten codes of ethics that prohibit efforts by its members to truthfully advertise their services in the Yellow Pages or in other media or to otherwise distribute to the public truthful information, including, among other things, their fees, whether they accept Medicare assignment of benefits or credit cards, their professional training and experience, their business hours and office locations, and their knowledge of languages other than English. Furthermore, BCMA allegedly published statements by some of its officials advising members that advertising was unethical and threatening disciplinary action and other sanctions against members who advertise. BCMA also allegedly intimidated members who seek to truthfully advertise and solicit patients by engaging in a concerted effort to obtain the names of those members and by threatening to publish their names and thereby subject them to ridicule. The complaint further asserts that BCMA sent letters to members who truthfully advertise or otherwise solicit their patients' business that pressured them to abandon such activities and that it summoned members to certain BCMA meetings at which disciplinary actions were threatened against these members in order to compel them to cease truthfully advertising or otherwise soliciting patients' business.

The complaint alleges that, as a result of BCMA's actions, its members have agreed not to, and do not, advertise their services or otherwise solicit patients' business, and members have been coerced into abandoning efforts to advertise or otherwise solicit patients' business. It further alleges that truthful advertising and solicitation enable physicians to compete on the basis of price, quality, and convenience and enable individual patients to choose among physicians on the basis of price, quality, or convenience. Consequently, it is alleged, competition among physicians for patients has been foreclosed, frustrated, and eliminated, and consumers have been deprived of truthful information about physicians' fees and services and the benefits of competition among physicians.

The Proposed Consent Order. The proposed order would prohibit BCMA from restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising of physicians' services or the solicitation by physicians of patients, patronage, or contracts. It would further prohibit BCMA from inducing, urging, encouraging, or assisting others to take any of the actions prohibited by the order. It also contains a proviso which permits BCMA to formulate, adopt, disseminate to its members, and enforce reasonable ethical guidelines governing representations which would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act or uninvited, in-person solicitation of patients who, because of their particular circumstances, are vulnerable to undue influence.

The proposed order would require that BCMA remove from its code of ethics, constitution, bylaws, policy statements, and guidelines any provision or statement which is inconsistent with the prohibitions of the order and thereafter publish revised versions of such documents, statements, or guidelines. BCMA would also be prohibited from taking any formal action against a person alleged to have violated any ethical standard without first providing such person with reasonable written notice of the allegations against him, a hearing at which the person or a person retained by him may seek to rebut such allegations, and BCMA's written findings or conclusions with respect to such allegations.

The proposed order would require that BCMA for ten years provide each new BCMA member with a copy of the complaint and order and, sixty days after the order becomes final, publish a copy of the complaint and order in its official publication. To ensure that the proposed order is obeyed, BCMA would be required within 120 days after the order becomes final to file a a written report with the Commission setting forth the manner and form of its compliance. BCMA would also be required, for a period of five years, to make its records available to the Commission staff and, annually for a period of five years, to file a written report with the Commission setting forth any action taken in connection with the activities covered by the order.

The proposed order may be affected

by the pending Supreme Court decision in the appeal of "American Medical Association," 94 F.T.C. 701 (1979), *aff'd*, 638 F.2d 443 (3d Cir. 1980), *cert. granted*, —— U.S. —— (1981) ("AMA"). The complaint in "AMA" alleged, among other things, that the respondent American Medical Association and certain state and county medical societies engaged in unfair methods of competition and unfair acts in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 41 et seq., by prohibiting advertising or solicition of patients by their members. The "AMA" respondents argued that they are not "corporations" within the meaning of the jurisdictional provisions of Sections 4 and 5 of the Federal Trade Commission Act and therefore that the Commission has no jurisdiction over them. In "AMA", the Commission held, in relevant part, that the respondents are "corporations" within the meaning of Section 4 and that respondents' prohibitions on advertising and solicitation violated Section 5 of the Act. The Commission opinion was affirmed by the Court of Appeals, and the respondents have appealed to the Supreme Court. The settlement agreement with BCMA provides that if the Supreme Court in "AMA" finds that the Commission did not properly determine the "AMA" respondents to be "corporations" within the meaning of Section 4 of the Act and the Commission thereafter issues a Final Order in "AMA" dismissing the "AMA" complaint on the ground that the respondents are not "corporations," then the BCMA complaint will be dismissed, without prejudice, and the consent order will be withdrawn. However, BCMA would be bound by the proposed order in the interim, that is, pending the Supreme Court's "AMA" decision. And, should the Supreme Court hold that the "AMA" respondents are "corporations" within the meaning of Section 4 of the Act but decide, for whatever reason, that no relief is appropriate in that case, the Commission would retain jurisdiction over BCMA and the proposed order would remain binding.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-7000 Filed 3-15-82; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release No. 33-6388; File No. S7-924]

Proposed Revisions to the Optional Form for the Registration of Securities to be Sold to the Public by the Issuer for an Aggregate Cash Price not to Exceed $5,000,000

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments.

SUMMARY: The Commission is publishing for public comment proposed amendments to Form S-18, a simplified registration form under the Securities Act of 1933, which would: expand the Form's availability to non-corporate registrants and registrants engaged, or to be engaged, in oil and gas related operations; amend several disclosure items to conform with the adoption of the integrated disclosure system; and modify the financial statement requirements to reflect recent final and proposed revisions to the financial information requirements in Commission filings.

DATE: Comments must be received on or before April 15, 1982.

ADDRESSES: All communications on the matters discussed in the release 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. S7-924 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

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 at (202) 272-2644.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published proposed amendments to Form S-18 (17 CFR 239.28), a simplified registration form, which, if adopted, would expand the availability of the Form to non-corporate registrants, and registrants engaged, or to be engaged, in oil and gas related operations. In addition, in view of the adoption of the integrated disclosure system [1] (the "Integration Release") which eliminates the Securities Act Registration Guides for the Preparation and Filing of Registration Statements and Reports ("Guides"), other than certain Industry Guides, and revises Regulation S-K (17 CFR 229.1) and Regulation C (17 CFR 230.400), the Commission is proposing numerous conforming amendments to the Form. Specifically, several disclosure items of the Form are proposed to be amended to reference items in Regulation S-K, the repository of uniform content requirements for filings under both the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). The proposed financial statement requirements of Form S-18 reflect recent final and proposed modifications to the financial information requirements in Commission filings.

[1] Securities Act Release Nos. 6383-6385 (March 3, 1982) [Published elsewhere in this issue].

I. Discussion

A. Availability of Form S-18

The Commission has for some time been taking steps to facilitate small business capital formation and to reduce the burdens imposed by the federal securities laws as applied to small business, to the extent consistent with the protection of investors.[2] The adoption of Form S-18 in April 1979, represented a significant initiative in this regard.[3] As adopted, noncorporate registrants and registrants who engaged, or intended to engage, in significant mining or oil and gas related operations, among others, were precluded from the use of the Form. Although several commentators and witnesses who appeared at the Commission's Small Business Hearings opposed these exclusions,[4] the Commission determined

[2] *See, e.g.*, Securities Act Release No. 6049 (April 3, 1979) (45 FR 21562) and Securities Exchange Act Release No. 16866 (June 2, 1980) (45 FR 40145) (summaries of prior actions); Securities Act Release No. 6299 (March 19, 1981) (46 FR 18947) (expansion of availability of Form S-18 to mining companies); Securities Act Release No. 6321 (June 11, 1981) (46 FR 31880) (expansion of availability of Rule 242 to mining companies); Securities Act Release No. 6339 (August 7, 1981) (46 FR 41791) (Regulation D, a proposed new regulation which would coordinate and streamline existing requirements applicable to private offers and sales of securities and which is intended to serve as a basis for a uniform state-federal limited offering exemption); and Securities Exchange Act Release No. 18189 (October 20, 1981) (46 FR 52382) (a proposed system of classification of smaller issuers for the purpose of exempting them from the registration and certain reporting provisions of the Exchange Act to the extent possible consistent with the public interest and the protection of investors).

[3] Securities Act Release No. 6049 (April 3, 1979) (44 FR 21562). During fiscal year 1981, there were 336 Form S-18 filings registering approximately $965 million of securities.

[4] In Securities Act Release No. 33-5914 (March 6, 1978) (43 FR 10676) the Commission announced its

Continued

to proceed cautiously in connection with the adoption of Form S–18 in view of its experimental nature and the initiation of regional processing of registration statements.

The Commission did express its intent to monitor the use of the Form for an appropriate period and to consider whether the conditions as to its availability should be expanded. The Office of Small Business Policy in the Division of Corporation Finance has undertaken an ongoing monitoring program regarding Form S–18. In addition, the Commission's Directorate of Economic and Policy Analysis has published two studies concerning the use of Form S–18.[5] In March 1981, the Commission amended Form S–18 to expand its availability to certain registrants engaged in mining operations, and to include a new disclosure item applicable to such registrants, noting the relatively widespread acceptance of the Form and the absence of any significant disclosure or enforcement problems.[6]

On the basis of its monitoring program and its experience with Form S–18, the Commission today is announcing proposed revisions to Form S–18 which, among other things, would expand the availability of the Form to non-corporate registrants, and to corporate or non-corporate registrants which are engaged, or intend to engage, in oil and gas operations. In view of the retention of several Industry Guides as part of the Integration Release, the Commission is not proposing new disclosure items for these registrants. Specifically, Industry Guide 5 (Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships) specifies disclosure requirements applicable to real estate limited partnerships and provides a useful reference with respect to material information in the context of limited partnerships generally.[7] Additionally, Industry Guide 2 specifies disclosure requirements applicable to registrants engaged in oil and gas related operations.

B. The Commission's Integrated Disclosure System

The revisions to Regulation S–K adopted in the integrated disclosure system represent the evolution of that regulation into a repository of uniform disclosure provisions under the Securities Act and the Exchange Act. The disclosure requirements contained in Regulation S–K are applicable to Securities Act registration statements only to the extent provided in the forms to be used for registration under the Securities Act. Form S–18, when adopted, did not make specific reference to the items within Regulation S–K since, at that time, Regulation S–K had but a few disclosure items which were either substantially longer and more burdensome than the corresponding items developed for Form S–18, or inapplicable in several respects to offerings of $5,000,000 or less by small issuers. Since Regulation S–K now contains disclosure requirements previously included in the Guides, in the Securities Act registration forms, and in Regulation C, the Commission believes that it is appropriate to reference certain items of that Regulation for the content requirements applicable to Form S–18 registration statements. It should be emphasized that these revisions represent merely a reformatting of the disclosure requirements currently applicable to the Form, and are not intended to significantly expand the nature or extent of the information currently required of registrants.[8]

C. Changes to Financial Disclosure Requirements

In September 1980, the Commission announced the adoption of amendments to Regulation S–X establishing uniform instructions as to periods to be covered by financial statements included in most Securities Act registrations filed with the Commission.[9] These revisions, among other things, established requirements with respect to the age of the financial statements at the dates of filing and effectiveness of the registration statement. The new rules regarding age of financials at date of effectiveness superseded standards previously prescribed in Guide 23, which were applicable to the financial statements to be included in all registration statements, including Form S–18. The Commission is now proposing to include in Form S–18 financial statement updating requirements which track the provisions of Regulation S–X. This revision should not result in additional disclosure burdens since it represents a codification of current staff policy.

Further, in view of the proposed expanded availability of Form S–18 to additional categories of registrants, accounting standards and financial statement disclosure requirements applicable to such registrants are similarly being proposed. The proposed revisions track the financial statement requirements applicable to these registrants when registering their securities on currently available forms.

Finally, the Commission recognizes that occasionally there may be highly unusual circumstances where the waiver of required financial statements may be appropriate. Accordingly, a new paragraph is being proposed which provides that the Commission may permit, upon written request and where consistent with the protection of investors, the omission of or substitution for prescribed financial statements. The Commission's intention is that the request for waiver would be used sparingly and that a waiver would be granted only in highly unusual circumstances. In addition, this paragraph advises registrants that the Commission may require, upon written notice, the filing of additional or substituted financial statements where necessary for an adequate presentation of financial condition or for the protection of investors.

II. Synopsis

The following discussion of the proposed revisions to Form S–18 is included to assist interested persons in their understanding of the substantive proposed revisions. However, attention is directed to the text of the proposals for a more complete understanding.

A. General Instructions

The General Instructions are proposed to be amended as follows: (1) To expand the availablility of the Form, as discussed above, General Instruction A (Rule as to Use of Form S–18), which would be redesignated General Instruction I, would be revised to eliminate the references to the term "corporation" in paragraphs (a) and (a)(1), to delete the exclusion regarding

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intention to hold a series of small business hearings. The full text of the comments received can be found in Commission File No. S7–734.

[5] Form S–18, A Monitoring Report on Its Use in 1979, U.S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, March 1980; Form S–18, A Monitoring Report on the First 18 Months of Its Use, U.S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, March 1981.

[6] Securities Act Release No. 6299 (March 19, 1981) (46 FR 18947).

[7] This guide is the subject of a proposed revision as set forth in Securities Act Release No. 6354 (October 7, 1981) (46 FR 50553).

[8] *See* Securities Act Release No. 6332 (August 6, 1981) (46 FR 41925) and Securities Act Release No. 6333 (August 6, 1981) (46 FR 41971) for a full discussion of the development of those Regulation S–K items which are proposed to be incorporated into Form S–18.

[9] Securities Act Release No. 6234 (September 2, 1980) (45 FR 63682).

the offering of limited partnership interests in paragraph (a)(3), and to delete the reference to registrants engaged or to be engaged in oil and gas activites in paragraph (a)(5). Additionally, the "securities of the issuer" definition currently in General Instruction A(c) would be deleted in proposed General Instruction I.C. However, the proposed instruction would continue to require the aggregation of certain sales of securities in calculating the $5 million offering ceiling, including offerings which would be deemed integrated under general principles of integration.[10]

Finally, new proposed General Instruction I.E. provides that Form S–18 is available for delayed or continuous offerings only with respect to the registration of securities which are to be issued upon the exercise of outstanding options, warrants, or rights, as provided in rule 415(a)(1)(iv). Since Form S–18 was not designed for the registration of securities to be offered on a delayed or continuous basis, the form will be unavailable for any other rule 415 type offering.

(2) In response to numerous inquiries, General Instruction B (Place of Filing), which would be redesignated as General Instruction II, is proposed to be amended to inform registrants that all post-effective amendments to Form S–18 shall be filed in the same office as the initial Form S–18 was declared effective.

(3) General Instruction C (Application of General Rules and Regulations), which would be redesignated as General Instruction III, is proposed to include new General Instruction III.C. which directs attention to the disclosure provisions of Regulation S–K and to specifically reference the Commission's policy on projections and policy on securities ratings outlined in § 229.001(c) and (d) of Regulation S–K, respectively. Further, new instruction III.D. is being proposed in order to direct attention to the Industry Guides listed in § 229.800 of Regulation S–K.

[10] *See* Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

[11] For a discussion of the development of the Regulation S–K items which would be cross-referenced in Form S–18, see the Integration Release and Securities Act Release No. 6332 (August 6, 1981) [46 FR 41925].

B. Part I—Narrative Information Required in Prospectus, Part H—Information Not Required in Prospectus, and Undertakings

In vew of the amendments adopted to Regulation S–K and Regulation C, and the elimination of the Guides as part of the integrated disclosure system, the Commission is proposing technical conforming amendments to: (1) The non-financial informational requirements of Part I to Form S–18; (2) the disclosure items within Part II to Form S–18; and (3) the undertaking requirements of the Form. With the exception of proposed Item 19 (Certain Market Information), discussed below, these revisions merely reformat the current Form S–18 content requirements by cross references to Regulation S–K,[11] and would not impose any significant additional disclosure burdens on registrants.

The chart below reflects where the current disclosure repurements of Form S–18 are proposed to be relocated in Regulation S–K. The other Regulation S–K items proposed to be referenced in form S–18 contain content requirements previously appearing in the Guides and Regulation C.

PROPOSED REVISIONS TO FORM S–18

Current item	Proposed item	Commentary
Item 1 (Distribution spread)	Item 1 (Forepart of registration statement and outside front cover page of prospectus).	Proposed item 1 references item 501 of regulation S–K. The disclosure requirements of current item 1 appear in item 501(g), and instructions 1 and 2 to item 501.
Item 2 (Plan of distribution)	Item 8 (Plan of distribution)	Proposed item 8 references item 508 of regulation S–K. The disclosure requirements of current item 2 appear in item 508 (a), (c)(2), (e) and (h). The disclosure requirements of current item 2(d) would not be retained.
Item 3 (Use of proceeds to the registrant))	Item 4 (Use of proceeds)	Proposed item 4 references item 504 of regulation S–K. The disclosure requirements of current item 3 appear in item 504, and instructions 2, 3, 4, and 5.
Item 4 (Organization within 5 years)	Item 15 (Organization within 5 years)	Current item 4 would be redesignated as item 15 with no textual changes.
Item 5 (Capital structure)	Proposed to be deleted	The information required by current item 5 is proposed to be deleted since it calls for information which is duplicative of that presented in the financial statements.
Item 6 (Description of business)	Item 16 (Description of business)	Current item 6 would be redesignated item 16 with no textual changes.
Item 7 (Description of property)	Item 17 (Description of property)	Current item 7 would be redesignated item 17 with no textual changes.
Item 7A (Description of property—Issuers engaged or to be engaged in significant).	Item 17A (Description of property—Registrants engaged or to be engaged in significant mining operations).	Current instruction (3) to item 7A(b) is proposed to be revised.
Item 8 (Legal proceedings)	Item 9 (Legal proceedings)	Proposed item 9 references item 103 of regulation S–K. The disclosure requirements of current item 8 appear in item 103, and instructions thereto.
Item 9 (Director and executive officers)	Item 10 (Directors and executive officers)	Proposed item 10 references item 401 of regulation S–K. The disclosure requirements of current item 9 appear in item 401(b), and instructions 1 and 2 thereto, item 401(c), item 401(d) and instructions thereto, item 401(e), item 401(f) and instructions 1, 2, and 3, thereto.
Item 10 (Remuneration of directors and officers)	Item 20 (Remuneration of directors and officers)	Existing item 10 is proposed to be redesignated as item 20 with one textual change relating to options held by directors and executive officers. This requirement is substantially indentical to that required by current item 11(c).
Item 11 (Options to purchase securities)		The disclosure requirements of current items 11 (a) and (b) are proposed to be deleted. Item 11(c) is proposed to be relocated in substance in proposed item 20.
Item 12 (Security ownership of certain beneficial owners and management).	Item 11 (Security ownership of certain beneficial owners and management).	Proposed item 11 references item 403 of regulation S–K. The disclosure requirements of current item 12 appear in item 403 and instructions 1, 2, 4, 5, 6, and 7. Existing item 12, instruction 3 would not be retained.
Item 13 (Interest of management and others in certain transactions).	Item 18 (Interest of management and others in certain transactions).	Current item 13 would be redesignated item 18 with no textual changes.
Item 14 (Securities being registered)	Item 12 (Description of securities being registered)	Proposed item 12 references item 202 of regulation S–K. The disclosure requirements of current item 14 appear in item 202(a) (1)–(4), item 202(b) (1), (2), (4), (5), (6), and (10), item 202(c) and item 202(d).
Item 15 (Financial statements and instructions)	Item 21 (Financial statements)	Current item 15 is proposed to be redesignated item 21 with textual changes.

PROPOSED REVISIONS TO FORM S–18—Continued

Current item	Proposed item	Commentary
Item 16 (Marketing arrangements)	Proposed to be deleted.	
Item 17 (Other expenses of issuance and distribution).	Item 23 (Other expenses of issuance and distribution)	Proposed item 23 references item 511 of regulation S–K. The disclosure requirements of current item 17 appear in item 511 and the instruction thereto.
Item 18 (Relationship with registrant of experts named in registration statement).	Item 13 (Interest of named experts and counsel)	Proposed item 13 references item 509 of regulation S–K. The disclosure requirements of current item 18 appear in item 509. The existing instructions to item 18 would not be retained. The disclosure would be required in Part I to the registration statement.
Item 19 (Recent sales of unregistered securities).	Item 24 (Recent sales of unregistered securities)	Proposed item 24 references item 701 of regulation S–K. The disclosure requirements of current item 19 are substantially identical to item 701.
Item 20 (Exhibits) and instructions as to exhibits.	Item 25 (Exhibits)	Proposed item 25 references item 601 of regulation S–K. The disclosure requirements of current item 20 appear in item 601(b) (1), (3), (4), (5), (6), (7), (8), (9), (10), (14), and (15). Existing instructions as to exhibit (11) is proposed to be deleted.

As noted above, the Commission is proposing to add a new disclosure item, Item 19 (Market Information), to Part I of the Form. This new item references Regulation S–K, Item 201(a)(2), which requires disclosure concerning common equity: (1) that is issuable pursuant to outstanding options, warrants or convertible securities; (2) that could be sold pursuant to Rule 144, or that the registrant has agreed to register under the Securities Act for sale by security holders; or (3) that is being, or has been publicly proposed to be, publicly offered by the registrant, the offering of which could have a material effect on the market price of the registrant's common equity securities. The Commission believes these are the 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 market developed. If proposed Item 19 is adopted, Item 201(a)(2) of Regulation S–K will be amended to specifically reference Form S–18 registrations.

Additionally, current Item 7A (Description of Property-Issuers Engaged or to be Engaged in Significant Mining Operations), which would be redesignated Item 17A (Description of Property-Registrants Engaged or to be Engaged in Significant Mining Operations), is proposed to be amended to include a new instruction regarding disclosure of estimates of reserves of lesser assurance than proven or probable.

Finally, it should be noted that if proposed Item 25 (Exhibits) is adopted, a Form S–18 column will be added to the Item 601 table of Regulation S–K to designate the exhibits required to be filed with the Form.

C. Part I—Financial Information Required in Prospectus

The Commission is proposing a new financial statement item. It would revise current Item 15 in the following manner.

(1) *General Requirements.*—Proposed Item 21(a) will contain two provisions not previously contained in Form S–18. First, registrants engaged in oil and gas producing activities would be required to follow the financial and accounting reporting standards specified in Article 4–10 of Regulation S–X. This reference is being proposed in view of the proposed expanded availability of the Form. Second, the item would advise registrants that the Commission may permit, upon written request and where consistent with the protection of investors, the omission of, or substitution for, financial statements required by the Form. This proposal is intended to codify existing administrative practice.

(2) *Balance Sheet.*—Proposed Item 21(b) would modify the existing standards by replacing the requirements that the balance sheet be as of a date within 90 days of the original date of filing with a 135 day rule.

(3) *Consolidated Statements of Income.*—Proposed Item 21(c), relating to consolidated statements of income, changes in financial condition and stockholders equity, contains specific language which exempts development stage companies (as defined by generally accepted accounting principles) from the requirement that comparative interim period income statements be presented. This provision is intended merely to codify existing administrative practice.

(4) *Requirements for Financial Statements of Companies Acquired or to be Acquired.*—Proposed new Items 21 (d) and (e) set forth the financial statement requirements for businesses acquired and to be acquired. These provisions track the standards prescribed in proposed Rules 3–07 and 3–08 of Regulation S–X,[12] with certain modifications. Any final revisions to these Regulation S–X rules would be considered by the staff when adopting the final amendments to Form S–18.

(5) *Age of Financial Statements at Effective Date.*—Proposed Item 21(f) would prescribe the financial statement updating requirements with respect to the date the registration statement is declared effective. In general, the financial statements would be required to be as of a date within 135 days of the anticipated effective date of the registration statement. If the effective date is subsequent to 45 days after the close of the registrant's fiscal year, audited financial statements for the most current fiscal year would be required.

(6) *Special Instruction for Real Estate Operations.*—Proposed Item 21(g) is designed to provide disclosure standards for real estate operations to be acquired by, among other entities, limited partnerships. This item is being proposed in view of the proposed expanded availability of the Form.

(7) *Special Instructions for Limited Partnerships.*—Proposed Item 21(h) sets forth instructions regarding the financial statements of the general partner that are required to be furnished. This item is being proposed in view of the proposed expanded availability of the Form.

D. Signatures

The current signature requirements are proposed to be modified in order to specify the signature requirements applicable to limited partnerships, and to obtain a certification from the registrant that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–18.

Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in

[12] Securities Act Release No. 6350 (September 24, 1981) (46 FR 48943).

accordance with 5 U.S.C. 603 regarding the revisions to Form S–18 proposed herein.

The analysis notes that the Commission adopted Form S–18 to be used by certain smaller companies in an effort to alleviate some of the cost and compliance burdens traditionally associated with registration on Form S–1, the standard registration form. The Commission took this step in recognition of its statutory authority to vary disclosure requirements depending upon the issuer and other considerations, and with the designated purpose of facilitating small business capital formation.

Specifically, as compared to Form S–1, Form S–18 provides for reduced narrative disclosure requirements, reduced and less burdensome financial statement requirements, and permits regional filing and processing of the registration statement, all of which result in a more timely and less expensive registration process for small issuers seeking access to the public capital markets.

In order to further reduce the expense incurred by small issuers registering their securities under the Securities Act, the Commission permits registrants which filed on Form S–18, and thereby became subject to section 15(d) of the Exchange Act, to include the Form's simplified financial statements and narrative disclosures in their initial annual report filed with the Commission.

The Commission believes these steps have served to alleviate the burdens on small business consistent with its statutory mandate to protect investors and foster continued confidence in the securities markets.

The amendments being proposed herein are designed to extend the benefits associated with Form S–18 registration to new categories of issuers, and to provide updating and conforming amendments to the disclosure items of the Form to reflect recent final and proposed Commission actions.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Daniel J. Abdun-Nabi, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 at (202) 272–2644.

Text of Proposed Form

17 CFR Chapter II is proposed to be amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

By proposing amendments to the registration statement on Form S–18 as set forth below:

§ 239.28 Form S–18, Optional Form For The Registration of Securities To Be Sold To The Public By The Issuer For An Aggregate Cash Price Not To Exceed $5,000,000. [Amended]

Proposed Revision 1

The Cover Page of, and General Instructions to, Form S–18 are proposed to be amended to read as follows:

SECURITIES AND EXCHANGE COMMISSION

Form S–18

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)

_____

(Address of principal place of business or intended principal place of business)

_____

(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——

CALCULATION OF REGISTRATION FEE

Title of each class securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.*

GENERAL INSTRUCTIONS

I. Rule as to Use of Form S–18

A. This form is to be used for the registration of securities not to exceed an aggregate offering price of $5 million which are to be sold for cash by the registrant, or for the account of security holders in accordance with paragraph B, provided such registrant:

(1) Is organized under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic issuer, or Canada or the United States if a Canadian issuer;

(2) Is not subject to the reporting provisions of the Securities Exchange Act of 1934 pursuant to Sections 12 or 15(d) of that Act;

(3) Is not an investment company;

(4) Is not an insurance company which is exempt from the provisions of Section 12 of the Securities Exchange Act of 1934 in reliance upon Section 12(g)(2)(G) thereof; and

(5) Is not a majority owned subsidiary of a registrant which does not meet the qualifications for use of the form, as specified herein.

B. This form may be used for the registration of securities to be sold for the account of any person other than the registrant, provided: (i) the aggregate offering price of such securities does not exceed $1.5 million and (ii) the aggregate offering price of such securities together with the aggregate offering price of any securities to be sold by the registrant does not exceed $5 million.

C. For purposes of computing the $5 million ceiling specified above, there shall be included in the aggregate offering price of the securities registered herein, the aggregate offering price of all securities sold: (i) by the registrant within one year prior to the commencement of the proposed offering in violation of Section 5(a) of the Securities Act; (ii) by the registrant within one year prior to the commencement of the proposed offering pursuant to a registration statement filed on Form S–18; and (iii) which would be deemed integrated with the proposed offering. (*See;* Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].) In computing the $5 million ceiling, the aggregate price of all securities sold which fall in more than one of the above described categories need be counted only once.

D. Notwithstanding the provisions of paragraph (A)(2), a registrant which has had a prior offering on Form S–18 may, during the remainder of the fiscal year in which the prior registration statement was made effective, use the form to register additional securities until the offering limit as computed in paragraph C has been met.

E. This form is available for delayed or continuous offerings only with respect to the registration of securities to be issued upon the exercise of options, warrants, or rights, as

*Inclusion of this paragraph is optional. See Rule 473. (Each page of this document, including exhibits and attachments, shall be numbered sequentially from this page, as page 1, through the last page of the document.)

provided for in Rule 415(a)(1)(iv) [17 CFR 230.415(a)(1)(iv)].

II. Place of Filing

A. At the election of the registrant, all registration statements on Form S–18 and related papers filed with the Commission shall be filed either at its principal office in Washington D.C. or in the Regional Office for the region in which the registrant's principal business operations are conducted, or are proposed to be conducted. The registration statement of any registrant having or proposing to have its principal business operations in Canada may be filed with the Regional Office nearest the place where the registrant's principal business operations are conducted, or are proposed to be conducted; *Provided, however,* That if the offering is to be made through a principal underwriter located in the United States, the offering statement may be filed with the Regional Office for the region in which such underwriter has its principal office. Such material may be filed by delivery to the Commission through the mails or otherwise. Questions concerning the appropriate place of filing may be directed to the Commission's Regional Offices.

B. The Commission will endeavor to process Form S–18 registration statements at the place of filing. However, due to workload or other special consideration, the Commission may refer processing to a different Commission office.

C. All post-effective amendments to the Form S–18 registration statement shall be filed in the office where the corresponding Form S–18 registration statement was declared effective.

III. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C [17 CFR 230.400 to 230.494], which contains general requirements regarding the preparation and filing of a registration statement.

B. Attention is directed to Rule 463 [17 CFR 230.463] and Form SR [17 CFR 239.61] which is required to be filed by first-time registrants under the Securities Act showing sales of registered securities and the use of proceeds therefrom. Form SR shall be filed at the same office where the registration statement was declared effective.

C. Attention is directed to Regulation S–K [17 CFR §§ 229.001–229.800] for the requirements relating to registration statement content. Where this form specifically references an item within that Regulation, the information need only be furnished to the extent appropriate. Special attention also is directed to paragraphs (c) and (d) of § 229.001 of Regulation S–K which outline the Commission's policies on projections and securities ratings, respectively.

D. Attention is directed to disclosure provisions set forth in the Industry Guides which are listed in § 229.800 of Regulation S–K [17 CFR 229.800]. These Industry Guides represent Division practices with respect to the disclosure to be provided by the affected industries in registration statements.

E. Attention is directed to Rule 15c2–8 [17 CFR 240.15c2–8] regarding prior delivery of preliminary prospectuses by registrants not subject to the reporting requirements of the Exchange Act.

Proposed Revision 2

Part I of Form S–18 is proposed to be amended by deleting existing Item 1 (Distribution Spread), Item 2 (Plan of Distribution), Item 3 (Use of Proceeds to Registrant), Item 5 (Capital Structure), Item 8 (Legal Proceedings), Item 9 (Directors and Officers), Item 12 (Security Ownership of Certain Beneficial Owners and Management) and Item 14 (Securities Being Registered) and by replacing such items with the following disclosure requirements:

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 229.501].

Item 2. Inside Front and Outside Back Cover Pages of Prospectus. Set forth in the inside front cover page of this prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K [17 CFR 229.502].

Item 3. Summary Information and Risk Factors. Furnish the information required by Item 503(a), (b), and (c) of Regulation S–K [17 CFR 229.503(a), (b) and (c)].

Item 4. Use of Proceeds. Furnish the information required by Item 504 of Regulation S–K [17 CFR 229.504].

Item 5. Determination of Offering Price. Furnish the information required by Item 505 of Regulation S–K [17 CFR 229.505].

Item 6. Dilution. Furnish the information required by Item 506 of Regulation S–K [17 CFR 229.506].

Item 7. Selling Security Holders. Furnish the information required by Item 507 of Regulation S–K [17 CFR 229.507].

Item 8. Plan of Distribution. Furnish the information required by Item 508 of Regulation S–K [17 CFR 229.508], except the information specified in Item 508(c)(1), (3), and (d).

Item 9. Legal Proceedings. Furnish the information required by Item 103 of Regulation S–K [17 CFR 229.103].

Item 10. Directors and Executive Officers. Furnish the information required by Item 401 of Regulation S–K [17 CFR 229.401].

Item 11. Security Ownership of Certain Beneficial Owners and Management. Furnish the information required by Item 403 of Regulation S–K [17 CFR 229.403].

Item 12. Description of the Securities To Be Registered. Furnish the information required by Item 202 of Regulation S–K [17 CFR 229.202].

Proposed Revision 3

Part I of Form S–18 is proposed to be amended by adding new disclosure Items 13 and 14, as follows:

Item 13. Interest of Named Experts and Counsel. Furnish the information required by Item 509 of Regulation S–K [17 CFR 229.509].

Item 14. Statement as to Indemnification. Furnish the information required by Item 510 of Regulation S–K [17 CFR 229.510].

Proposed Revision 4

Part I of Form S–18 is proposed to be amended by redesignating existing Item 4 (Organization Within 5 Years), Item 6 (Description of Business), Item 7 (Description of Property), and Item 13 (Interest of Management and Others in Certain Transactions) as Items 15, 16, 17, and 18, respectively, with no textual changes.

Proposed Revision 5

Part I to Form S–18 is proposed to be amended by redesignating existing Item 7A (Description of Property-Issuers Engaged or to be Engaged in Significant Mining Operations) as Item 17A and by modifying current Instruction (3) to Item 7A(b) to read as follows.

Item 17A (Description of Property-Registrants Engaged or To Be Engaged in Significant Mining Operations)

* * * * *

(b) * * *.

Instructions * * *.

(3) Estimates other than proved or probable reserves, and any estimated values of such reserves shall not be disclosed unless such information is required to be disclosed by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with, the registrant or otherwise to acquire the registrant's securities, such estimates may be included.

Proposed Revision 6

Part I of Form S–18 is proposed to be amended by deleting existing Item 11 (Options to Purchase Securities), and by adding the following disclosure item:

Item 19. Certain Market Information. Furnish the information required by Item 201(a)(2) of Regulation S–K [17 CFR 229.201(a)(2)].

Proposed Revision 7

Part I of Form S–18 is proposed to be amended by redesignating existing Item 10 (Remuneration of Directors and Officers) as Item 20 and by adding the following additional paragraph.

Item 20. Remuneration of Directors and Officers.

* * * * *

(c) Furnish the following information as to options to purchase securities from the

registrant or any of its subsidiaries which are outstanding as of a specified date not more than 30 days prior to the date of filing of the registration statement held by (1) each director and executive officer named in answer to paragraph (a), above, naming each such person, and (2) all directors and officers as a group without naming them:

(i) The title and amount of the securities called for by such options;

(ii) The purchase price of the securities called for and the expiration dates of such options; and

(iii) The market value of the securities called for by such options as of the latest practicable date.

Instructions. 1. The term "options" as used in this item includes all options, warrants and rights other than those issued to security holders on a pro rata basis.

2. The extension of options shall be deemed the granting of options within the meaning of this item.

3. Where the total market value of securities called for by all outstanding options as of the specified date referred to in this item does not exceed $10,000 for any director or executive officer named in answer to paragraph (a), above, or $50,000 for all officers and directors as a group this item need not be answered with respect to options held by such person or group.

4. In case a number of options are outstanding having different prices and expiration dates, the options may be grouped by prices and date. If this produces more than five separate groups, then there may be shown only the range of the expiration dates and the average purchase prices, i.e., the aggregate purchase price of all securities of the same class called for by all outstanding options to purchase securities of that class divided by the number of securities of such class so called for.

Proposed Revision 8

Part I of Form S–18 is proposed to be amended by deleting existing Item 15 (Financial Statements and Instructions) and by replacing such item with the following disclosure requirements:

Item 21. Financial Statements.

(a) General.

(1) The financial statements of the registrant, or the registrant and its predecessors or any businesses to which the registrant is a successor, which are to be filed as part of the registration statement shall be prepared in accordance with generally accepted accounting principles (GAAP) in the United States or in the case of a Canadian registrant, a reconciliation to such U.S. GAAP shall be included in a note or schedule to the financial statements.

(2) Regulation S–X [17 CFR 210.1–210.12], Form and Content of and Requirements for Financial Statements, shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S–X, and registrants engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of Regulation S–X with respect to such activities.

(3) The Commission may, upon the informal written 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 therefore 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.

(b) Consolidated balance sheets.

(1) The registrant and its subsidiaries consolidated shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 90 days of the date of filing the registration statement if the registrant (including predecessors) existed for a period less than one fiscal year.

(2) When the filing date of the registration statement falls after 134 days subsequent to the end of the registrant's most recent fiscal year a balance sheet as of an interim date within 135 days of the filing date also shall be included in the registration statement. Such balance sheet need not be audited.

(c) Consolidated statements of income, changes in financial condition and stockholder's equity.

(1) There shall be filed for the registrant and its subsidiaries consolidated, statements of income, changes in financial position and stockholders equity for each of the two fiscal years preceding the date of the most recent audited balance sheet being filed (or for such shorter period as the registrant has been in business), and for the interim period, if any, between the end of the most recent fiscal year and the date of the most recent balance sheet being filed. These statements should be audited to the date of the most recent audited balance sheet being filed.

(2) If an income statement is filed for an interim period there shall also be filed, except for registrants in the development stage as defined by GAAP, an income statement for a comparable period of the prior year.

(3) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(d) Requirements for income statements of businesses acquired before the date of the most recent balance sheet.

(1) If, before the date of the most recent balance sheet filed pursuant to paragraph (b) the registrant has acquired by the purchase method of accounting one or more businesses, or interests in one or more businesses, the investment in which is accounted for by the equity method, and such business(es) or investment(s), singly or in the aggregate, are significant to the registrant, audited income statements for such business(es) shall be filed for such periods prior to the transaction date as may be necessary when added to the time, if any, for which audited income statements after the transaction date are filed to cover the equivalent of the period specified in paragraph (c)(1) or such fewer periods as the business(es) may have been in existence.

(2)(a) The test of significance shall be based on tests used in the term "significant subsidiaries" in Rule 405 [17 CFR 230.405].

(b) The test shall be made for the latest annual consolidated financial statements of the registrant with substituted percentages to be used as follows:

(i) If the transaction was consummated during the most recent fiscal year or during the subsequent period, no substitution.

(ii) If the transaction was consummated during the fiscal year prior to the most recent fiscal year reported upon, 25 percent. If financial statements of an acquired business are not required in the year of acquisition, they would not be required subsequently.

(c) See Securities Act Release No. 4950 with regard to audit requirements for financial statements of acquired businesses.

(3) If more than one business has been acquired or more than one investment has been made, the required income statements may be presented on a combined basis, if appropriate.

(4) If the transaction was effected during the most recent fiscal year or in the subsequent interim period, pro forma statements of income, in columnar form reflecting the combined operations of the entities shall be filed for the latest fiscal year and interim period.

(5) This paragraph (d) shall not apply with respect to the registrant's succession to the business of any totally held subsidiary.

(e) Requirements for financial statements of businesses acquired after the date of the most recent balance sheet or of businesses to be acquired.

(1) If, after the date of the most recent balance sheet filed pursuant to paragraph (b) the registrant has succeeded to or plans to succeed to one or more businesses or has acquired or plans to acquire interests in one or more businesses, the investment in which is to be accounted for by the equity method, and such business(es) or investment(s) singly or in the aggregate are significant to the registrant, financial statements combined, if appropriate, shall be filed for such business which would be required if they were registering securities on Form S–18 under the Securities Act. A business or investment is significant based on the tests in paragraph (d)(2).

(2) In addition, to reflect the succession to any businesses there shall be filed a pro forma balance sheet in columnar form as of the date of the most recent balance sheet required by paragraph (b) giving effect to the combination of the entities. There shall also be filed pro forma statements of income in columnar form for the periods for which the

results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed pursuant to paragraph (b).

(3) This paragraph (e) shall not apply with respect to the registrants succession to the business of any totally held subsidiary.

(f) Age of financial statements at effective date of registration statement.

(1) If the financial statements are as of a date 135 days or more prior to the date the registration statement is expected to become effective the financial statements shall be updated with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet. There shall also be filed, except for registrants in the development stage, and income statement for a corresponding period of the preceding fiscal year. Such interim financial statements need not be audited.

(2) When the anticipated effective date of the registration statement falls within 45 days subsequent to the end of the fiscal year, the registration statement need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year: *Provided, however,* That if the audited financial statements for such fiscal year are available they must be included in the registration statement. If the anticipated effective date falls after 45 days subsequent to the end of the fiscal year the registration statement must include audited financial statements for the most recently completed fiscal year.

(3) When the filing date of the registration is near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the registration statement, the registration statement shall be updated with such financial statements if they become available prior to anticipated effective date.

(g) Special instructions for real estate operations to be acquired.

If, during the period for which income statements are required, the registrant (a) has acquired one or more properties which in the aggregate are significant, or (b) since the date of the latest balance sheet required, has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties.

(1) Audited income statements (not including earnings per unit) for the two most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if (i) the property is not acquired from a related party; (ii) material factors considered by the registrant in assessing the property are described with specificity in the prospectus with the regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, *ad valorem* tax rates, maintenance expenses, capital improvements anticipated); and (iii) the registrant indicates in the filing that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property is to be operated by the registrant there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(h) Special instructions for limited partnerships.

(1) In addition to the financial reporting requirements in paragraphs (a) through (g), registrants which are limited partnerships are required also to file the balance sheets of the general partners as described in subparagraphs (2) through (4), below.

(2) Where a general partner of the limited partnership is a corporation there shall be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year. Receivables from the parent or affiliate of the general partner (including notes receivable, but excluding trade receivables), should be presented as deductions from the shareholders' equity of the general partner. Where a parent or affiliate of the general partner has committed itself to increase or maintain the general partner's capital then there shall also be filed an audited balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year.

(3) Where a general partner of the limited partnership is a partnership there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where a general partner of the limited partnership is a natural person there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets on such balance sheet should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), singly or in the aggregate, shall be disclosed in the text of the prospectus.

(i) Special instructions for registrants engaged in mining operations.

With respect to companies engaged or to be engaged in the mining business, attention is directed to the instruction to Item 17A concerning the appropriate classification of issuers engaged in the exploratory, development and production stage of mining.

Proposed Revision 9.

Part II of Form S–18 is proposed to be amended by deleting existing Item 16 (Marketing Arrangements), Item 17 (Other Expenses of Issuance and Distribution), Item 18 (Relationship with Registrant of Experts Named in Registration Statement), Item 19 (Recent Sales of Unregistered Securities) and Item 20 (Exhibits), and by adding the following disclosure requirements:

Part II.—Information Not Required in Prospectus

Item 22. Indemnification of Directors and Officers. Furnish the information called for by Item 702 of Regulation S–K (17 CFR 229.702).

Item 23. Other Expenses of Issuance and Distribution. Furnish the information called for by Item 511 of Regulation S–K (17 CFR 229.511).

Item 24. Recent Sales of Unregistered Securities. Furnish the information called for by Item 701 of Regulation S–K (17 CFR 229.701).

Item 25. Exhibits. Furnish the exhibits as required by Item 601 of Regulation S–K (17 CFR 229.601).

Proposed Revision 10.

Part II of Form S–18 is proposed to be amended by removing the existing undertaking requirements and replacing them with the following:

Item 26. Undertakings. Furnish the undertakings required by Item 512 of Regulations S–K (17 CFR 229.512).

Proposed Revision 11.

The signature requirements of Form S–18 are proposed to be amended to read as follows:

Signatures.

Pursuant to the requirements of the

Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–18 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 Canadian 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 the exhibit requirements concerning signatures pursuant to powers of attorney.

Proposed Revision 12.

Part II to Form S–18 is proposed to be amended by deleting existing Instructions as to Exhibits.

Proposed Revision 13.

Part II to Form S–18 is proposed to be amended by deleting the existing Appendix to the Form.

Statutory Authority.

The Commission is proposing the revisions to Form S–18 pursuant to sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933.

(Secs. 6, 7, 8, 10, and 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6603 Filed 3-12-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–125–78]

Accumulated Earnings Tax; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the application of the accumulated earnings tax to corporations accumulating earnings and profits to avoid the income tax on distributions by the corporation to certain foreign corporate shareholders.

DATES: The public hearing will be held on May 6, 1982, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by April 22, 1982.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–125–78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202–566–4691, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 532, 533, and 537 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Monday, December 22, 1980 (45 FR 84088).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by April 22, 1982. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 82-7099 Filed 3-15-82; 8:45 am]

BILLING CODE 4830-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

Refunds From Carriers for Unused Transportation Services; Extension of Comment Period

AGENCY: General Services Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 2, 1982, the General Services Administration published a proposed rule in the **Federal Register** (47 FR 4707) concerning refunds from carriers for unused transportation services. The period for commenting on that proposed rule has been extended until April 2, 1982. This extension is the result of a request from the Air Transport Association of America on behalf of a number of their member carriers. The carriers have requested additional time to more thoroughly analyze the proposed rulemaking to allow for a more detailed response.

DATE: Comments must be received by April 2, 1982.

ADDRESS: Written comments should be sent to the General Services Administration (TACP), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Reports and Procedures Branch, Office of Transportation Audits (202–275–0664).

(31 U.S.C. 244 and 40 U.S.C. 486(c))

Dated: March 4, 1982.

Allan W. Beres,

Commissioner of Transportation and Public Utilities Services.

[FR Doc. 82-7040 Filed 3-15-82; 8:45 am]

BILLING CODE 6820-AM-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 312

[Docket FEMA-P-312]

Use of Civil Defense Personnel, Materials and Facilities for Natural Disaster Purposes

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: FEMA is proposing to add a regulation which authorizes the use for natural disaster purposes of civil defense personnel, materials, and facilities supported with contributions under the Federal Civil Defense Act of 1950, as amended, and provides terms and conditions for such use. This regulation is necessary to implement section 803 of the Department of Defense Authorization Act of 1982.

DATES: Comment on this proposed rule is due on or before May 17, 1982.

ADDRESS: Rules Docket Clerk, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: John E. Bokel, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-3843.

SUPPLEMENTARY INFORMATION: Section 803 of the Department of Defense Authorization Act of 1982 added a new section 207 to the Federal Civil Defense Act of 1950, as amended. That section clarified the "dual-use" policy regarding use of resources funded under the Federal Civil Defense Act for preparedness to cope with natural disasters. The amendment makes explicit in the statute, authority for State and their political subdivisions to use funds and resources for preparation for and response to both attack-related and natural disaster-related events. However, use of attack-preparedness resources for natural disaster response purposes is allowed only if such use is consistent with, contributes to, and does not detract from attack related preparedness.

The Act directed the issuance of regulations to implement this policy.

As federal funding to which these regulations will be applicable is less than $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to whom the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepard. An environmental assessment is being prepared in accordance with part 10 of the regulations in this Title.

Accordingly, it is proposed to amend Title 44, The Code of Federal Regulations by adding a new part 312 to Subchapter E, Chapter 1, as follows:

PART 312—USE OF CIVIL DEFENSE PERSONNEL, MATERIALS, AND FACILITIES

Sec.

312.1 Purpose.
312.2 Definitions.
312.3 Policy.
312.4 General.
312.5 Personnel.
312.6 Materials and Facilities.

Authority: Section 803(a)(3) Pub. L. 97-86; Section 401 of the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2253; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp. p. 329; and Executive Order 12148 of July 20, 1979, 44 FR 43239.

§ 312.1 Purpose.

The purpose of the regulations in this part is to prescribe the terms and conditions under which civil defense personnel, materials, and facilities, supported in whole or in part through contributions under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251 *et seq.*, hereinafter referred to as "the Act", may be used for natural disasters, to the extent that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

§ 312.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) The term "attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by use of bombs, shellfire, or atomic radiological, chemical, bacteriological, or biological means or other weapons or processes;

(b) The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of the Act, any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

(c) The term "civil defense" means all those activities and measures designed or undertaken (1) to minimize the effects upon the civilian population caused, or which would be caused, by an attack upon the United States, or by natural disaster, (2) to deal with the immediate emergency conditions which would be created by any such attack, or natural disaster, and (3) to effectuate emergency repairs to, or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack or natural disaster. Such term shall include, but shall not be limited to, (A) measures to be taken in preparation for anticipated attack or natural disaster (including the establishment of appropriate organizations, operational plans, and supporting agreements; the recruitment and training of personnel; the conduct of research; the procurement and stockpiling of necessary materials and supplies; the provision of suitable warning systems; the construction of preparation of shelter areas, and control centers; and, when appropriate, the non-military evacuation of civil population); (B) measures to be taken during attack or natural disaster (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities; the evacuation of personnel to shelter areas; the control of traffic and panic; and the control and use of lighting and civil communications); and (C) measures to be taken following attack or natural disaster (including activities for fire fighting; rescue, emergency medical, health and sanitation services; monitoring for specific hazards of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities);

(d) The word "materials" shall include raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for civil defense;

(e) The word "facilities", except as otherwise provided herein, shall include buildings, shelters, utilities, and land;

(f) The term "United States" or "States" shall include the several States,

the District of Columbia, the Territories, and the possessions of the United States;

(g) The term "political subdivisions" shall include local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships; and

(h) The term "CPG 1–3" refers to FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1–3, as amended by numbered changes thereto and by Civil Preparedness Circulars (CPC) as provided in 44 CFR 310.20. CPG 1–3 sets forth detailed guidance on procedures which a State and, where applicable, its political subdivisions must follow in order to request financial assistance from FEMA. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted.

§ 312.3 Policy.

(a) It is the policy of FEMA to provide a means of assistance to States and their political subdivisions in their carrying out responsibilities to alleviate the suffering and damage from attack-related or natural disasters by:

(1) Providing contributions for personnel, equipment, materials and facilities that may be used in preparing for or responding to disasters, provided that the use of such funds for natural disasters is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and its political subdivisions.

(3) Assisting in achieving greater coordination of disaster preparation and response programs.

(4) Providing technical advice and guidance to States and their political subdivisions for organizing and preparing to meet the effects of disasters.

(b) These regulations are not to be interpreted as authorizing States and their political subdivisions to request or receive additional assistance relating to particular disaster incidents.

§ 312.4 General.

(a) The Director, FEMA, will provide statements to States and their political subdivisions concerning Agency mission and goals, Annual Program Emphasis, and other directions, instructions, and technical guidance which together specify preparedness and response activities for both attack-related and natural disasters.

(b) States and their political subdivisions may apply to FEMA for financial assistance under the Act in a manner prescribed by Federal Regulations governing grants and cooperative agreements. Such applications must be compatible with FEMA's goals and requirements described in paragraph (a) of this section.

(c) Financial contributions to States and their political subdivisions are made by FEMA based on approval of the activities and projects described in the Annual Program Paper, and/or Comprehensive Cooperative Agreement, and which are in conformance with provisions of CPG 1–3, and applicable FEMA regulations set forth in Chapter 1 of this Title 44, Chapter 1, Subchapter E, of the Code of Federal Regulations. Financial contributions will not be made unless substantive activities and projects in preparations for and response to attack-related disasters are identified, and progress is indicated in the submissions, and recorded in program reporting systems.

(d) State and local officials may use personnel, equipment, and facilities for natural disasters outside the physical boundaries of the jurisdiction to which these personnel, materials, and facilities were provided, under the conditions stated within this Regulation.

(e) Specific criteria relating to the preparedness and response activities are given in sections 5 and 6 of this part.

§ 312.5 Personnel.

FEMA contributes to the development and support of emergency management organizations in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through payment of salaries and benefits of State and local civil defense staff, and the payment of administrative expenses and travel, not to exceed 50%. FEMA also provides contributions for training and education expenses. The following use of such personnel for natural disaster purposes is allowable provided that such usage is consistent with, contributes to, and does not detract from civil defense preparedness:

(a) In developing, maintaining, testing and exercising plans, systems, and procedures for the protection of people and property from the effects of attack-related disasters, States and their political subdivisions may include and provide for natural disasters.

(b) Personnel supported in part through contributions under the Act may be assigned responsibilities for preparation for and response to natural disasters in any specific emergency occurring in a State or its political subdivisions as determined by the responsible State or local officials respectively.

(c) Personnel supported in whole under the Act, such as Nuclear Civil Protection Planners, Radiological Defense Officers, and so on, may be assigned to response operations in natural disasters for a period not to exceed ten (10 working days, provided that prior authorization of the FEMA Regional Director is obtained. An extension to work in excess of ten (10) working days must be requested of the respective FEMA Regional Director by a separate action; the length of time must be specified in the request.

(d) In the event of an emergency or major disaster declared under the Disaster Relief Act of 1974, as amended, personnel will not be provided overtime compensation and expenses under the Act.

§ 312.6 Material and facilities.

FEMA also contributes to the development and support of emergency management in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through providing certain materials and facilities. The following may be used for natural disaster purposes provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) Materials provided and maintained through contributions under the Act.

(b) Technical information, guidance through which technical assistance is provided, and training courses, may contain examples, illustrations, discussion, suggested applications and uses of material.

(c) Equipment loaned under provisions of the Contributions Project Loan Program.

(d) Facilities, such as Emergency Operating Centers, provided and maintained through contributions under the Act.

Dated: March 9, 1982.

Lee M. Thomas,

Associate Direction, State and Local Programs and Support.

[FR Doc. 82-7014 Filed 3-15-82; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The NOAA proposes to withdraw an appendix to one of the foreign fishing regulations that shows the joint venture processing (JVP) capacity and the total allowable level of foreign fishing (TALFF) in the various United States fisheries. Instead, NOAA proposes to announce redistributions of fish among foreign and domestic fishermen and processors by publishing a notice. Timely announcements of redistributions will facilitate the attainment of optimum yield from the Nation's fishery resources.

DATES: Comments on the proposed rule must be received on or before April 15, 1982.

ADDRESS: Comments should be addressed to: Alfred J. Bilik, Permits and Regulations Division, National Marine Fisheries Service, 3300 Whitehaven Street N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Susan Jelley (Permits and Regulations Division), Telephone: 202 634–7432.

SUPPLEMENTARY INFORMATION: Since their inception, the foreign fishing regulations (50 CFR Part 611) have included a table that shows the optimum yield of all fisheries under management plans, as well as the distribution of the optimum yield among domestic harvest, domestic and joint venture processing amounts, "reserve," and the total allowable level of foreign fishing (TALFF). The TALFF table, which shows current distributions of the optimum yields, is codified as an Appendix to section 611.20, "Total Allowable Level of Foreign Fishing." Since amounts of fish are redistributed continuously throughout the year as the fisheries progress, NMFS has been required to amend the TALFF table, to reflect those adjustments through the rulemaking process. In the past that process of amending the TALFF table posed few difficulties, and it had the advantage that foreign nations and U.S. joint venture operators maintained their copies of the foreign fishing regulations. Any changes in the distributions of optimum yields among TALFF, domestic annual harvest, domestic processing capacity, and joint venture processing (JVP) amounts were easily referenced.

The NMFS has reviewed its practice of publicizing the distributions of the optimum yields of the various fisheries by means of an appendix to a regulation, in light of the requirements imposed upon rulemaking by current regulatory reform measures. The lengthy delays that have resulted from compliance with those requirements have created ill-will with U.S. fishermen seeking to deliver increasing quantities of fish to foreign processors at sea, since they could not exceed JVP until a release from "reserves" was reflected in the TALFF table. These delays also have a negative effect on our foreign relations; to ease tensions, the State Department is allowing foreigners to fish on the basis of "anticipated, preliminary reallocations" of the reserves. For example, § 611.70 requires the Pacific whiting reserve release to have a 15-day public comment period. Because it has to go as a rulemaking, the final release was not made until five months after the date specified in the regulations. Therefore, NMFS proposes to withdraw the TALFF table from the Code of Federal Regulations, and to publish both initial JVPs and TALFFs, (JVPs and TALFFs at the start of the fishing year) and in-season adjustments to JVPs and TALFFs required by the fishery management plans as "notices" in the **Federal Register**. Interested parties will also be directed to contact the Office of Resource Conservation and Management or the appropriate Regional Director for up-to-date tables. This proposal will ensure that all interested parties have notice of the JVP and TALFF for a fishery. At the same time, this proposal will reduce delay.

The removal of the TALFF table from the appendix to 50 CFR 611.20 requires that references to the appendix in other portions of Part 611 be deleted. Thus amendments are proposed for §§ 611.20, 611.50, 611.52, 611.60, 611.70, 611.80, 611.81, 611.91, 611.92, 611.93, and 611.94, to reflect the proposed change. In addition, parts of § 611.81 are consolidated to avoid redundancy, and part of § 611.92 is revised to delete obsolete textual material.

Classification

This action seeks to simplify the process of publicizing information contained in the TALFF table. As a change in the manner of publicizing that information, this action does not constitute a "major" rule under the criteria specified in E.O. 12291. For the same reason, this action will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact upon a substantial number of small entities.

This action has no potential for significant environmental impacts, and thus is "categorically excluded" from requirements of the National Environmental Policy Act. This action involves no collection of information for purposes of the Paperwork Reduction Act of 1980.

Dated: March 9, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For reasons set forth in the preamble, it is proposed to amend 50 CFR Part 611 as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1821 and 1855.

2. Section 611.20 is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing.

(a) The total allowable level of foreign fishing (TALFF), if any, with respect to any fishery subject to the exclusive fishery management authority of the United States is that portion of the optimum yield (OY) of such fishery which will not be harvested by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFFs will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFFs at the beginning of the relevant fishing year will be published in the **Federal Register**. Adjustments to those numbers will be published as notices in the **Federal Register** upon occasion or as directed by regulations implementing fishery management plans. For current apportionments, contact the appropriate Regional Director or the Office of Resource Conservation and Management, F/CM, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

3. Section 611.50 is amended by revising paragraph (b)(3) to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(b) * * *

(3) *TALFF.* The TALFFs for the Northwest Atlantic Ocean fishery are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

4. Section 611.52 is amended by revising paragraph (b) to read as follows:

§ 611.52 Mackerel fishery.

* * * * *

(b) *Allocation of reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified as DAH at the beginning of each fishing year, the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial level of harvest specified as DAH, the Regional Director will allocate the entire reserve to TALFF.

* * * * *

5. Section 611.60 is amended by revising paragraph (b)(2) to read as follows:

§ 611.60 General provisions.

* * * * *

(b) * * *

(2) *TALFF.* The TALFFs are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

6. Section 611.70 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 611.70 Washington, Oregon, and California trawl fishery.

* * * * *

(b) * * *

(1)(i) *Initial TALFF.* The total allowable levels of foreign fishing (TALFF), the amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

7. Section 611.80 is amended by revising paragraph (b)(2) to read as follows:

§ 611.80 Seamount groundfish fishery.

* * * * *

(b) * * *

(2) *TALFF.* The TALFFs for the seamount groundfish fisheries are published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

8. Section 611.81 is amended by removing paragraphs (b)(4)(ii)(A) and (b)(4)(iii), by redesignating paragraph (b)(4)(i)(A) as paragraph (b)(4)(ii)(A) and revising it, by redesignating paragraphs (b)(4)(i)(B), (b)(4)(ii)(B) and (b)(4)(ii)(C) as paragraphs (b)(4)(ii)(B), (b)(4)(iii)(A) and (b)(4)(iii)(B), respectively, and by adding a new paragraph (b)(4)(i), to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahi mahi fishery.

* * * * *

(b) * * *

(4) * * *

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the **Federal Register.** Current TALFFs, reserves and JVP are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahi mahi which may be caught and retained in each regulatory area by foreign vessels subject to this section is limited to the TALFF for each applicable regulatory area, and to the amount of the applicable national allocation.

* * * * *

9. Section 611.91 is amended by revising paragraph (b)(2) to read as follows:

§ 611.91 Tanner crab fishery.

* * * * *

(b) * * *

(2) *TALFF.* The total allowable level of foreign fishing (TALFF) for Tanner crab is published in the **Federal Register.** Current TALFFs are also available from the Regional Director.

* * * * *

10. Section 611.92 is amended by removing paragraph (a)(3) and by revising paragraph (c)(1)(i) to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c)(1) *OYs, TALFFs and Reserves.* (i) The specifications of optimum yield (OY), estimates of domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and TALFFs and Reserves are published in **Federal Register.** Current amounts are also available from the Regional Director. Species listed in paragraph (b)(1) and Table I of this section as "unallocated species," or species for which the TALFF is zero, shall be treated as prohibited species in accordance with 50 CFR 611.13.

* * * * *

11. Section 611.93 is amended by revising paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) *TALFFs and Reserves.* (i) The OY, DAH, TALFF, and reserve for target species and other species taken in the fishery are specified and published in the **Federal Register.** Current amounts are also available from the Regional Director. The TALFF for nonspecified species is any amount of such species taken incidentally to the harvest of the specified TALFF, and of such amounts of the specified reserve and DAH as may be apportioned to TALFF.

* * * * *

(2) *Apportionment to TALFF of Reserves and Initial DAH.* (i) *Apportionment of Reserves.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Secretary shall apportion to TALFF up to one-fourth (¼) of each of the initial reserve amounts, in accordance with paragraph (b)(2)(iii) of this section: February 2, April 2, June 2, and August 2.

(ii) *Apportionment of Initial DAH.* As soon as practicable after each of the following dates, and after consultation with the North Pacific Fishery Management Council, the Secretary shall reasses each DAH amount and shall apportion to TALFF such parts thereof as he or she determines to be appropriate in accordance with paragraph (b)(2)(iii) of this section: June 2 and August 2.

* * * * *

12. Section 611.94 is amended by revising paragraph (b)(2) to read as follows:

§ 611.94 Snail fishery.

* * * * *

(b) * * *

(2) *TALFF, DAH, DAP, JVP, Reserve.* The annual total allowable level of foreign fishing (TALFF), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and reserve for snails for each calendar year are published in the **Federal Register.** Current amounts are also available from the Regional Director.

* * * * *

[FR Doc. 82-7058 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 51
Tuesday, March 16, 1982

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.

ACTION

National Voluntary Service Advisory Council; Meeting

AGENCY: ACTION.

ACTION: National Voluntary Service Advisory Council; Meeting.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that a meeting of the National Voluntary Service Advisory Council (Council) will be held on April 1, 1982 from 8:30 a.m.–5:30 p.m. in Washington, D.C. For further details concerning location contact Mark Blitz, Assistant Director of ACTION for Policy and Planning, at (202) 254–8501.

The purpose of this meeting is to enable the Council members to review the nominees submitted for a Volunteer Action Award and to compile a final list of recommended individuals for such an award for the Director of ACTION to submit to the President. In accordance with the determination of the Director of ACTION, the meeting will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available to the public at 806 Connecticut Avenue, NW., Washington, D.C. 20525 during the regular working hours of 8:30 a.m. to 5:15 p.m.

Signed this 11th day of March 1982 in Washington, D.C.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 82–7076 Filed 3–15–82; 8:45 am]

BILLING CODE 6050–01–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Public Access and Information; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Committee on Public Access and Information of the Administrative Conference of the United States, to be held at 9:30 a.m., Thursday, March 18, 1982, in the Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, D.C.

The Committee will meet to discuss further the scope and substance of comments by the Committee on proposed recommendations of the ACUS Committee on Regulation of Business on the subject of the treatment of confidential business information under the FOIA. At meetings on February 17, and March 11, 1982, the Committee reached general agreement on the issues of (1) the appropriate coverage of Exemption (b)(4) of the FOIA, (2) agency discretion to release information covered by the exemption, (3) and certain aspects of agency procedure for handling such information.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers (202–254–7065). Minutes of the Committee meetings are available on request.

Richard K. Berg,

General Counsel.

March 11, 1982.

[FR Doc. 82–7044 Filed 3–15–82; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Central Electric Power Cooperative, Inc.; Finding of No Significant Impact

The Rural Electrification Administrtation (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 possible financing assistance to Central Electric Power Cooperative (Central) of Jefferson City, Missouri, for the construction of 51.8 km (32.4 miles) of 161 kV transmission line from Truman Dam to Gravois and associated substation facilities. The project is located in Benton and Morgan Counties, Missouri.

Central has prepared a Borrower's Environmental Report (BER) concerning the proposed project. An Environmental Assessment (EA) was prepared by REA. Threatened and endangered species, important farmlands and forestlands, archeological and historic sites, wetlands and floodplains, and other potential impacts of the proposed project are adequately considered in the EA.

The floodplain of Cole Camp Creek will be crossed by the proposed project. REA determined there are no practicable alternatives to crossing this floodplain. The transmission structures, however, are designed to mitigate potential effects arising from the placement of the transmission line within the floodplain.

Based on REA's independent evaluation, the EA and a review of Central's BER and other documents, a Finding of No Significant Impact was reached in accordance with REA Bulletin 20–21:320–21.

Alternatives evaluated include no action and alternate routes. The proposed transmission line is acceptable for Central to provide a second outlet for the Truman Dam hydroelectric plant.

Copies of the Finding of No Significant Impact, the EA and Central's BER may be reviewed at or obtained from the office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250,

or reviewed at the office of Central Electric Power Cooperative, P.O. Box 269, Highway 54 South, Jefferson City, Missouri 65102.

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 9th day of March, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-6922 Filed 3-15-82; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Docket No. 40432]

Bergt-Aia-Western-Wien Acquisition and Control Case; Hearing

Notice is hereby given pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled proceeding will be held on April 19, 1982, at 10:00 a.m. (local time), in Room 1003, Hearing Room A, 1875 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to Board Order 82-2-86 adopted February 17, 1982, the prehearing conference report served on March 9, 1982, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., March 11, 1982.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 82-7045 Filed 3-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 35918]

Deutsche Lufthansa Aktiengesellschaft, Respondent; Enforcement Proceeding; Reassignment

This proceeding has been reassigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., March 10, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc 82-7046 Filed 3-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Order No. 82-2-128; 82-2-130]

Orders Concerning North Atlantic and North/Central Pacific Fares

The Board has adopted orders approving, subject to conditions, agreements adopted by the International Air Transport Association (IATA) relative to the North Atlantic passenger fare structure (Order 82-2-128), and to North/Central Pacific fare matters (Order 82-2-130). The changes would generally take effect on April 1, 1982.

Copies of these orders are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

By the Civil Aeronautics Board: February 26, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-7047 Filed 3-15-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket Nos. 37818, 37976; Order 82-3-62]

Order Concerning Mail Rates

Order 82-3-62, March 9, 1982, Dockets 37818 and 37976, establishes increased intra-Hawaii final service mail rates for the periods July 1 through December 31, 1981, and January 1 through June 30, 1982.

Copies of this order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-7048 Filed 3-15-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 9:00 p.m., on April 15, 1982, at the Lord Cromwell Inn, Exit 21 off I-9, Cromwell, Connecticut. The purpose of this meeting is to discuss program plans for fiscal year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, John Rose, Jr., Post Office Box 3216, Hartford, Connecticut, 06103, (203) 525-4700 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 10, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-7008 Filed 3-15-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Fund Availability for Planning Grant Funds to Economic Development Districts; Redevelopment Areas and Indian Tribes

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice. Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations.

SUMMARY: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes under the authority of section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA). Eligible applicants are Districts, Areas and Indian Tribes (including Alaskan Native Villages).

GRANT OBJECTIVE: The objective of these section 301(b) grants is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income particularly in designated Redevelopment Areas.

FUNDING AVAILABILITY: EDA will give funding consideration in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Funds are presently available in two categories: Districts and Areas (Category A); and Indian Tribes (Category B).

A. As of December 31, 1981, a total of $7,000,000 is available for Districts and Areas. For renewal applicants (applicants currently participating in the program), maximum assistance is limited to 50 percent of their previous annual grants. For new applicants, assistance is limited to $25,000.

B. As of December 31, 1981, a total of $1,500,000 is available for Indian Tribes currently participating in the program. No new applicants will be considered for grants in this category.

FUNDING INSTRUMENT: Assistance will be provided in the form of direct grants or grant amendments for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to cover the remaining costs through cash or in-kind contributions. Category B assistance will be provided in the form of grant amendments for up to 100 percent of project costs.

GRANT DURATION: Under Category A, amended grants will be extended for six months, generally through June 30, 1982.

Successful Category A applicants not currently participating in the program may receive up to one year from the date of grant award to accomplish project activities. Under Category B, amended grants will be extended for six months, generally through June 30, 1982. No amendment may extend beyond September 30, 1982.

SELECTION CRITERIA: For renewal applicants under both Categories A and B, selection will be based upon past performance and receipt of the special report assessing past, present and future economic development efforts that was required by their grants providing assistance through December 31, 1981. For applicants with unresolved audits or outstanding financial obligations from previous grants, consideration of further funding may be delayed. Renewal applicants performing satisfactorily will receive priority consideration for available funds.

For new applicants under Category A, selection will be based upon meeting eligibility criteria for authorized Districts or Redevelopment Areas and the responsiveness of their proposals to the following program requirements: (1) That the grant will be administered by the Economic Development District, or in the case of Areas, the delegate agency responsible for the comprehensive economic development planning process; (2) that an ongoing economic development planning process exists or will be established; (3) that the planning process will be coordinated with the State, cities, other political subdivisions and economic development organizations; and (4) that the results of the planning process will be incorporated into the executive decision making process of the District or Redevelopment Area. New applicants must present a strong case supporting the logic for this one-time funding of an on-going economic planning process.

PRE-APPLICATION PROCEDURES: Renewal applicants under both Categories A and B should begin the application process by submitting a letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) of the District, Area or Indian Tribe indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 301(b) program. New applicants under Category A should submit a brief (no more than 5 pages) proposal outlining the specific activities to be carried out with the requested funds and indicating how the proposed activity will be part of a continuous planning process. The proposal must be submitted by the chief elected official (Chairman of the Board) of the District or Area. Priority consideration for funding will be given to letters and proposals postmarked no later than two weeks after the date of this notice.

FORMAL APPLICATION PROCEDURES: Following review of the pre-application materials, EDA will notify applicants selected for funding to submit formal applications for specific amounts.

In the case of renewal applicants, this will consist of a revised budget document, while new applicants will be asked to complete the following forms: ED-430 Planning Grant Application; ED-503 Assurance of Civil Rights Compliance; and ED-524 Certification of Compliance with Clean Air Act and Federal Water Pollution Control Act.

A-95 APPLICABILITY: Applicants not participating in the programs as of December 31, 1981, must comply with the provisions of OMB Circular A-95, which require review and comment by appropriate State and Areawide Clearinghouses.

SUBMISSION INFORMATION: Requests for assistance under this program should be addressed to the appropriate EDA Regional Office as identified below.

John E. Corrigan, Director, Philadelphia Regional Office, Economic Development Administration, Federal Reserve Bank Building, 105 North Seventh Street, Room 600, Philadelphia, Pennsylvania 19106, (215) 597-4603, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia Virgin Islands, and West Virginia;

Wilbur J. Hattendorf, Acting Director, Atlanta Regional Office, Economic Development Administration, Suite 700, 1365 Peachtree Street, N.E., Atlanta, Georgia 30309, (404) 881-7401, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee;

Craig M. Smith, Director, Denver Regional Office, Economic Development Administration, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80206, (303) 837-4714, Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming

Edward G. Jeep, Director, Chicago Regional Office, Economic Development Administration, 175 W. Jackson Boulevard, Suite A-1630, Chicago, Illinois 60604, (312) 353-7706, Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin;

Phyllis Lamphere, Director, Seattle Regional Office, Economic Development Administration, Lake Union Building, Suite 500, 1700 Westlake Avenue North, Seattle, Washington 98109, (206) 442-0596, Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington;

Joseph B. Swanner, Director, Austin Regional Office, Economic Development Administration, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, Texas 78701, (512) 397-5461, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

For further information, contact Henry Glaser on (202) 377-3027 at EDA Headquarters in Washington, D.C.

Dated: March 9, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82-7060 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-24-M

Fund Availability for State Planning Grants

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice. Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Local Economic Development Planning.

SUMMARY: This notice provides information on the availability of grant funds under the State Planning Grant Program authorized by section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA). The program is administered by EDA's Office of Planning, Technical Assistance, Research and Evaluation.

ELIGIBILITY: Eligible applicants under this program are the governor of a State

or an agency designated by him, and the Chief Executive Officer of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Otherwise eligible applicants currently receiving assistance for economic development planning under section 301(b) of PWEDA will not be considered for funding under section 302(a).

GRANT OBJECTIVE: The primary objective of a planning grant under section 302(a) is to strengthen the economic development planning capability of States and other eligible entities to ensure a more productive use of available resources in reducing the effects of economic problems, particularly those resulting in high unemployment and low income. Planning conducted under these grants must be part of a continuous process involving public officials and private citizens.

FUNDING AVAILABILITY: EDA will give funding consideration in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As of December 31, 1981, a total of $1,450,000 is available for this program in Fiscal Year 1982. For renewal applicants (applicants currently participating in this program), maximum assistance is limited to the precentage of their annual grant level to total program levels in the past multiplied by the amount of presently available funds. For new applicants (applicants not currently participating in the program), assistance is limited to $30,000.

FUNDING INSTRUMENT: Assistance will be provided in the form of a direct grant for up to 75 percent of project costs. The applicant is required to cover the remaining costs through cash or in-kind contributions. Successful renewal applicants currently participating in the program will have this assistance provided in the form of an amendment to their existing grant to increase project costs, continue the existing scope of work, and extend the duration of the project.

SELECTION CRITERIA: For renewal applicants, selection will be based upon past performance and receipt of the special report assessing past, present and future economic development efforts that was reqired by their grants providing assistance through December 31, 1981.

For new applicants, selection will be based upon the responsiveness of their proposals to the following program requirements: (1) That the grant will be administered by the Governor or an agency designated by him as responsible for the comprehensive economic development planning process; (2) that an ongoing economic development planning process exists or will be established; (3) that the planning process will be conducted cooperatively by the State, cities, other political subdivisions and economic development organizations; (4) that the results of the planning process will be incorporated into the executive decision making process; and (5) that the planning process will be coordinated with energy conservation planning efforts to ensure that energy conservation principles, activities and measures are reflected in State economic development plans, programs and projects. New applicants must present a strong case supporting the logic for this one-time funding of an on-going economic planning process.

For applicants with unresolved audits or outstanding financial obligations from previous grants, consideration of further funding may be delayed.

GRANT DURATION: Project activities funded under this program for renewal applicants may extend no later than September 30, 1982. Project activities funded under this program for new applicants may extend no longer than one year beyond the grant award date.

PRE-APPLICATION PROCEDURES: Renewal applicants should begin the application process by submitting a letter signed by the head of the grantee organization indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 302(a) program. New applicants should submit a brief (no more than 5 pages) proposal outlining the specific activities to be carried out with the requested funds and indicating how the proposed activity will be part of a continuous planning process. The proposal must be submitted by the Governor in the case of States and the Chief Executive Officer in the case of other eligible applicants. Priority consideration for funding will be given to letters and proposals postmarked no later than two weeks after the date of this notice.

FORMAL APPLICATION PROCEDURES: Following review of the pre-application materials, EDA will notify applicants selected for funding to submit formal applications for specific amounts. In the case of renewal applicants, this will consist of a revised budget document, while new applicants, will be asked to complete the following forms: ED–430 Planning Grant Application; ED–503 Assurance of Civil Rights Compliance; and ED–524 Certification of Compliance with Clean Air Act and Federal Water Pollution Control Act.

A–95 APPLICABILITY: All new applicants must comply with the provisions of OMB Circular A–95, which require that applications be cleared by the State Clearinghouse.

SUBMISSION INFORMATION: Requests for assistance under this program should be addressed to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research and Evaluation, Economic Development Administration, Room 7844, U.S. Department of Commerce, Washington, D.C. 20230. Further information can be obtained from Tony Meyer or Beatrice Montague in EDA Headquarters on (202) 377–3027.

Dated: March 3, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82–7062 Filed 3–15–82; 8:45 am]

BILLING CODE 3510–24–M

Fund Availability for University Center Grants

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice. Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance.

SUMMARY: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to continue the University Center Program operated under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA). Eligible applicants under this program are the 31 colleges and universities currently participating in the program.

FUNDING AVAILABILITY: EDA will give funding consideration in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As of December 31, 1981, a total of $1,160,000 is available in Fiscal Year 1982 for continuation grants ranging from $25,000 to $65,000. The grants will be of six months' duration.

FUNDING INSTRUMENT: EDA will extend grant amendments to successful applicants for up to 75 per cent of the project's cost to increase project costs, continue the existing scope of work, and extend the project duration for six months. The grantee is required to cover the remaining costs of the project through cash or in-kind contributions.

SELECTION CRITERIA: Consideration of applications will be based on an assessment of a grantee's past performance and conformance of the program structure and scope of work

with the following guidelines which govern the University Center program:

1. The center must be a significant semi-autonomous component of a university's outreach program with high level policy guidance and administrative support.

2. The center must offer a comprehensive range of business and engineering technical assistance services primarily through one-to-one counseling techniques.

3. The centers should assemble a small full-time staff comprised of a director and three or more professionals who are generalists in such fields as economics, marketing, accounting, industrial engineering and community development. The Center must also mobilize the specialized resources of the University.

4. The center must fill a significant gap in the range of institutional assistance available to support economic development in the service area, and must complement and reinforce this other assistance.

5. The center must serve an area of substantial economic need.

6. The center must demonstrate that it will be capable of generating the resources needed to carry on the program of activity after EDA funding expires.

For applicants with unresolved audits or outstanding financial obligations from previous grants, consideration of further funding may be delayed.

PRE-APPLICATION PROCEDURES: Following publication of this notice, EDA Regional Office staff will contact each University Center which EDA is currently supporting to ascertain its interest in continuing in the program and to advise it of the level of funding EDA will consider providing through a continuing grant amendment.

FORMAL APPLICATION PROCEDURES: Universities and colleges which meet the selection criteria and elect to continue in the program will be advised to complete an application for EDA assistance which should consist of the following forms: ED–357 NG, Technical Assistance Application; ED–503, Civil Rights Compliance Form; ED–612, Current and Project Permanent Employees Form; ED–524, Clean Air and Water Compliance Form.

A–95 APPLICABILITY: All eligible applicants have previously complied with the provisions of OMB Circular A–95.

SUBMISSION INFORMATION: Applications should be submitted to the appropriate EDA Regional Office. Addresses are:

John E. Corrigan, Director, Philadelphia Regional Office, Economic Development Administration, Federal Building, 105 North Seventh Street, Room 600, Philadelphia, Pennsylvania 19106, (215) 597–4603;

Wilbur J. Hattendorf, Acting Director, Atlanta Regional Office, Economic Development Administration, Suite 700, 1365 Peachtree Street, N.E., Atlanta, Georgia 30309, (404) 881–7401;

Edward G. Jeep, Director, Chicago Regional Office, Economic Development Administration, 175 W. Jackson Boulevard, Suite A–1630, Chicago, Illinois 60604, (312) 353–7706;

Craig M. Smith, Director, Denver Regional Office, Economic Development Administration, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80206, (303) 837–4714;

Phyllis Lamphere, Director, Seattle Regional Office, Economic Development Administration, 1700 Westlake Avenue North, Lake Union Building, Suite 500, Seattle, Washington 98109, (206) 442–0596;

Joseph B. Swanner, Director, Austin Regional Office, Economic Development Administration, American Bank Tower, Suite 600, 221 West Sixth Street, Austin, Texas 78701, (512) 397–5461.

For further information, contact Scott V. Rutherford, (202) 377–2812 at EDA Headquarters in Washington, D.C.

Dated: March 3, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82–7061 Filed 3–15–82; 8:45 am]

BILLING CODE 3510–24–M

Fund Availability for Urban Planning Grants

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice. Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Local Economic Development Planning.

SUMMARY: The EDA Office of Planning, Technical Assistance, Research and Evaluation announces that grant funds are available to continue the Urban Planning Program operated under the authority of section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3121, *et seq.*, (PWEDA). Eligible applicants under this program are the 93 cities and urban counties currently participating in the program.

GRANT OBJECTIVE: The primary objective of a planning grant under section 302(a) is to strengthen the economic development planning capability of cities and urban counties to ensure a more productive use of available resources in reducing the effects of economic problems, particularly those resulting in high unemployment and low incomes. Planning conducted under these grants must be part of a continuous process involving public officials and private citizens.

FUNDING AVAILABILITY: EDA will give funding consideration in accordance with the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As of December 31, 1981, a total of $2,300,000 is available for this program in Fiscal Year 1982 for continuation grants, which will be approximately the percentage of each applicant's annual grant level to total grant levels in the past multiplied by the amount of currently available funds.

FUNDING INSTRUMENT: EDA will extend grant amendments to successful applicants for up to 75 percent of project costs. The applicant will be required to cover the remaining costs through cash or in-kind contributions.

SELECTION CRITERIA: Consideration of applications will be based upon past performance and receipt of the special report assessing past, present, and future economic development efforts that was required by the grants providing assistance through December 31, 1981. For applicants with unresolved audits or outstanding financial obligations from previous grants, consideration of further funding may be delayed.

GRANT DURATION: Project activities funded under this program may extend no later than September 30, 1982.

APPLICATION PROCEDURES: Applicants for section 302(a) planning grants should begin the application process by submitting a letter signed by the head of the grantee organization indicating a desire to continue receiving funds to carry out the types of planning activities eligible under the 302(a) program. Priority consideration for funding will be given to letters and proposals postmarked no later than two weeks after the date of this notice.

FORMAL APPLICATION PROCEDURES: Following review of the letters, EDA will notify applicants which meet the selection criteria and elect to continue in the program to submit a revised budget document.

A–95 APPLICABILITY: All eligible applicants for this program have already complied with the provisions of OMB Circular A–95.

SUBMISSION INFORMATION: Requests for assistance under this program should be addressed to Beverly L. Milkman, Director, Office of Planning, Technical Assistance, Research, and Evaluation, Economic Development Administration, Room 7844, U.S. Department of Commerce, Washington, D.C. 20230. Further information can be obtained from Tony Meyer and Beatrice Montague in EDA Headquarters on (202) 377–3027.

Dated: March 3, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82-7059 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Titanium Sponge From the U.S.S.R.; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On December 8, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the U.S.S.R. The review covered the only known exporter of this merchandise to the United States, Techsnabexport, and the period March 1, 1979 through July 31, 1980. Intersted parties were given an opportunity to submit oral or written comments on the preliminary results. The Department received no comments objecting to those results.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or David R. Chapman, office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4793/2657).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, a dumping finding with respect to titanium sponge from the U.S.S.R. was published in the **Federal Register** as Treasury Decision 68–212 (33 FR 12138). On December 8, 1981, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the finding (46 FR 60048). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of titanium sponge. Titanium sponge, which is used in the manufacture of aerospace vehicles, is currently classifiable under item number 629.1420 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of only one exporter of titanium sponge from the U.S.S.R. to the United States, Techsnabexport. This review covers the period from March 1, 1979 through July 31, 1980. The Treasury Department reviewed all prior periods.

Final Results of the Review

Interested parties were invited to comment on the Department's preliminary results. The Department received only one comment, which did not object to our results but did suggest that overproduction may lead to sales at less than fair value in the future.

An allegation of possible sales at less than fair value in the future, without more, is an insufficient basis for a change in the conclusion reached in the preliminary review. If future imports enter at less than fair value, they will be the subject of a subsequent review under section 751. Therefore, the final results of our review are the same as those presented in the preliminary results.

Since there were no margins, the Department shall not require cash deposits, as provided for in § 353.48(b) of the Commerce regulations, on shipments of titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This zero deposit rate shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of August 1982.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 9, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-7019 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Proposed Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on March 19, 1979 (44 FR 16466), the National Bureau of Standards (NBS) announced the establishment of exclusion criteria and procedures for developing and maintaining an exclusion list pertaining to Federal Information Processing Standards Publication 60 (which has since been redesignated as 60–1), Input/Output (I/O) Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The approval of the Secretary of Commerce (Secretary) of those three Federal Information Processing Standards was previously announced in the **Federal Register** on February 16, 1979 (44 FR 10098-10101). The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the **Federal Register** on August 27, 1979 (44 FR 50078).

The March 19, 1979, notice stated that once the exclusion list was established, interested parties could obtain a copy of that list and would be invited to submit to the Director, Institute for Computer Sciences and Technology (ICST), comments or recommendations regarding additions to or removals from that list. The notice also advised that information regarding any proposed changes in the exclusion list would be published in the **Federal Register.**

Announcement of the establishment of the initial exclusion list and its availability from NBS upon request appeared in the **Federal Register** on June 29, 1979 (44 FR 37968). Numerous changes to that exclusion list have since been made and announced in the **Federal Register.**

Comments from interested parties specifically identifying candidate systems which should be added to or removed from the exclusion list have been and continue to be especially encouraged.

As a result of a review and analysis of comments and recommendations received recently, NBS is proposing the following additions to the exclusion list:

Manufacturer	Model
IBM Corp.	IBM 4321.
WICAT Systems	System 100.
WICAT Systems	System 100DT.
WICAT Systems	System 150 IT, SST, MF, FS, WS.

Interested parties will be allowed until April 30, 1982, to submit written

comments regarding the proposed changes. Such written comments should be submitted to the Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Following review of comments received in response to this notice, NBS will make a determination on the proposed changes and will announce that determination in a subsequent notice published in the **Federal Register.**

NBS maintains a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments in response to this notice.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: March 11, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-7020 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

State/Federal Cooperation in Fisheries Management—Adjusting to "New Federalism"; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: State Fish and Wildlife Directors from the Coastal and Great Lakes States and Territories, and officials from the National Oceanic and Atmospheric Administration, will meet to discuss "State/Federal Cooperation in Fisheries Management—Adjusting to 'New Federalism.'" The Conference format provides for panel presentations, regional workgroup sessions, and discussion forums to identify critical issues, to recommend actions, and to develop a strategy for maintaining an effective State/Federal partnership in the 1980's.

DATES: The Conference will convene on Tuesday, April 27, 1982, at 1:00 p.m.; Wednesday, April 28, 1982, at 8:30 a.m.; and Thursday, April 29, 1982, at 8:30 a.m. Conference adjournment is 3:00 p.m., Thursday, April 29, 1982.

ADDRESS: The Conference will take place at the Holiday Inn at 1501 Rhode Island Avenue, NW., Washington, D.C. The Conference is open to the public. Limited seating will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, State/Federal Division, Office of Resource Conservation and Management, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7454.

Dated: March 10, 1982.

E. Craig Felber,

Chief, Management Services Staff, National Marine Fisheries Service.

[FR Doc. 82-7088 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to review status reports on the development of fishery management plans; consider foreign fishing applications, if any, and conduct other fishery management business.

DATES: The public meetings will convene on Wednesday, April 7, 1982, at approximately 8:30 a.m., and will adjourn at approximately 5 p.m.; reconvene on Thursday, April 8, 1982, at approximately 8:30 a.m., and will adjourn at approximately noon.

ADDRESS: The public meetings will take place at the Fort Brown Motor Hotel, Aztec/Conference A, 1900 E. Elizabeth Street, Brownsville, Texas.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, Telephone: (813) 228-2815.

Dated: March 11, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-7086 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Determination

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Assistant Administrator for Fisheries has determined that the following nations remain in conformance with U.S. regulations regarding the protection of porpoises and accordingly may continue to export yellowfin tuna to the United States until December 31, 1982 provided prohibitions are not imposed under other U.S. statutes. These nations are: Bermuda, Canada, Cayman Islands, Costa Rica, Ecquador, Korea, Netherlands, Antilles, New Zealand, Panama, and Venezuela. the following nations remain under a Marine Mammal Protection Act prohibition to export yellowfin tuna to the U.S.: Mexico and Peru. The prohibitions against Senegal and the Congo are hereby rescinded since neither nation has been pursuing for yellowfin tuna in the eastern tropical Pacific for at least one year.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. R. B. Brumsted, Acting Deputy Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235. (Telephone: 202/634-7529).

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) published regulations in the **Federal Register** on December 23, 1977, (42 FR 64548-64560) governing the taking of marine mammals incidental to commercial fishing operations. These regulations were repromulgated on October 31, 1980 (45 FR 72178-72196). Included in these regulations are provisions concerning the importation of yellowfin tuna and tuna products from nations known to be involved in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean (ETP). Effective January 1, 1978, these importation provisions made the importation of yellowfin tuna and tuna products from nations known to be involved in the ETP fishery contingent upon certain findings by the Assistant Administrator for Fisheries. The Assistant Administrator must find (a) that the fishing operations of the nation concerned "* * * are conducted in conformance with U.S. regulations and standards * * *", or (b) that, "although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S. fishing operations under these regulations" (see 50 CFR 216.24(e)(5)).

These findings would then be subject to an annual review in which the information items listed in § 216.24(e)(5)(ii) are updated for the previous calendar year.

In 1981, the NMFS requested these information items for the 1980 calendar year from the following nations known to be actively pursuing in the ETP: Bermuda, the Cayman Islands, Costa Rica, Ecuador, Korea, Netherlands Antilles, New Zealand, Panama, and Venezuela. All nations have now responded and have been determined to be fishing in accordance with the requirements of § 216.24 except Panama, which must submit additional information prior to July 1, 1982. Canada's single remaining purse seiner is a vessel smaller than those known to effectively fish on porpoise and therefore that nation is not required to submit an annual report.

The following nations have been prohibited from exporting yellowfin tuna to the United States under the Marine Mammal Protection Act and during 1981 did not submit information requesting a new finding of conformance: Mexico, Peru, Congo, and Senegal. Spain remains under an embarbo imposed by the Tuna Conventions Act and may not export ETP yellowfin tuna to the United States. Ecuador, Mexico, and Peru are currently prohibited from exporting tuna to the United States under Section 205 of the Magnuson Fishery Conservation and Management Act.

The prohibition against the importation of yellowfin tuna into the United States from the Congo and Senegal was imposed in February 1980 after these nations failed to respond to a NMFS request for an annual update. However, during the 1980, the Congo moved its two vessels from the ETP to the Atlantic Ocean and Senegal sold its three vessels. These latter three vessels are currently fishing under Mexican flag. Since neither nation has had any purse seining operating in the ETP for the past year, they are no longer required to comply with the provisions of 50 CFR 216.24(e) and may, effective on the date of this notice, resume the exportation of yellowfin tuna to the United States.

Dated: March 12, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-7087 Filed 3-15-82; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to the GNMA-CDR and GNMA-CD Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade ("CBOT" or "Exchange") has submitted a proposal to amend its GNMA-CDR and GNMA-CD futures contracts in order to exclude GNMA "buy-down" mortgage pools from the standard grade deliverable on the GNMA contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that provision is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 15, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the Chicago Board of Trade Rules 1736.01B and 2036.01B.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Chicago Board of Trade is proposing Rules 1736.01B and 2036.01B pertaining to its GNMA-CDR and GNMA-CD futures contracts, respectively. The CBOT's proposed rules exclude GNMA "buy-down" mortgage pools from the deliverable grade in the GNMA futures contracts. The Exchange states that the exclusion of GNMA "buy-down" mortgage pools is necessary to insure a consistent pricing mechanism in the GNMA futures contracts. Specifically, the Exchange believes the inclusion of GNMA "buy-down" mortgage pools would result in increased basis risk, distortion of the contract's pricing mechanism, and reduction of the hedging utility of the GNMA contracts because of significant price differentials between "buy-down" and standard GNMA certificates.

In accordance with Section 5a(12) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 7a(12) (Supp. III 1979), the Commission has determined that the proposals submitted by the CBOT concerning its GNMA-CDR and GNMA-CD futures contracts are of major economic significance. Accordingly, the CBOT's proposed Rules 1736.01B and 2036.01B are printed below, using italics to indicate additions:

1736.01B Deliverable Grade—Resolved, that the Board hereby interprets Regulation 1736.01 not to include GNMA Buy-Down Mortgage Pools.

Further resolved, that pursuant to said interpretation, the Board hereby directs that GNMA certificates issued in connection with Buy-Down Mortgage Pools may not be delivered in satisfaction of a GNMA-CDE contract.

And further resolved, that the Board directs that upon tender of GNMA certificates, the seller shall be deemed to warrant that such GNMA certificates comply with the standards set forth in the regulation.

2036.01B Deliverable Grade—Resolved, the the Board hereby interprets Regulation 2036.01 not to include GNMA Buy-Down Mortgage Pools.

Further resolved, that pursuant to said interpretation, the Board hereby directs that GNMA certificates issued in connection with Buy-Down Mortgage Pools may not be delivered in satisfaction of a GNMA-CD contract.

And further resolved, that the Board directs that upon tender of GNMA certificates, the seller shall be deemed to warrant that such GNMA certificates comply with the standards set forth in the regulation.

Other materials submitted by the CBOT in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by April 15, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on March 10, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-6997 Filed 3-15-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency

Privacy Act of 1974; Amendment to the Notice for a System of Records

AGENCY: Defense Intelligence Agency.

ACTION: Amendment to the notice for a system of records.

SUMMARY: The Defense Intelligence Agency proposes to amend the notice for a system of records subject to the Privacy Act of 1974. These amendments followed by a complete system notice as amended are set forth below.

DATES: This amendment shall be effective April 15, 1982.

ADDRESSES: Address all comments to the system manager named in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Helen E. Shuford; Chief, Administrative Management Branch (RTS-1C), Defense Intelligence Agency, B-112 Cafritz Building, Washington, D.C. 20301. Telephone: (202) 695-1040.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices of systems of records subject to the Privacy Act of 1974, Title 5 United States Code section 552a (Pub. Law 93-579; 88 Stat. 1896 *et seq.*) were published in the **Federal Register** at 46 FR 2544 (FR Doc. 82-674), January 18, 1982.

The proposed amendments do not require an altered system report in accordance with 5 U.S.C. 552a(o).

M. S. Healy,

OSD Federal Registerr Liaison Officer, Department of Defense.

March 5, 1982.

Changes

Proposed Amendments

LDIA 0335

System Name:

Alcohol and Drug Abuse Reporting Program.

Changes:

Categories of Individuals Covered by the System:

Delete current entry and insert:

"Any civilian employee of the Defense Intelligency Agency (DIA) who has been diagnosed as an alcohol/drug abuser by a physician and subsequently enroled in an alcohol/drug abuse treatment program. Former employees who were undergoing treatment at time of termination are retained in the file for two years and other former employees who were enrolled in a program less than two years before their termination may also be included."

Authority for Maintenance of the System:

Delete the current entry and insert:

"Pursuant to the authority contained in the National Security Act of 1947, (10 U.S.C. 133d) the Secretary of Defense issued Department of Defense Directive 5105.21 creating DIA as a separate agency of the Department of Defense under his direction and herein charged the Director, DIA, with the responsibility for the maintenance of necessary and appropriate records."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Delete the current entry and insert:

"Blanket routine uses" for DIA systems of records do not apply to this system of records.

Records concerning the identity, medical diagnosis, prognosis, or treatment of any person irrespective of whether or when the individual ceased treatment, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, are confidential and may be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., section 1175, (as amended) and Title 42 U.S.C., section 4582 (as amended). Therefore, the record in the system may be disclosed outside DIA:

To government personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation;

To appropriate elements within the Department of State, Department of Justice and Office of Personnel Management when required for actions relative to the employees employment, access to classified material or areas;

To a court of competent jurisdiction upon authorization by an appropriate order. Any safeguards against unauthorized disclosure imposed by the court in its order shall be honored."

Safeguards:

Delete current entry and insert:

"Records are maintained in a building protected by security guards and are stored in vaults, safes, or locked cabinets and are accessible only to personnel who are properly screened, cleared and trained in the protection of this information and have a need for access in connection with their official duties."

L-DIA 0335

SYSTEM NAME:

Alcohol and Drug Abuse Reporting Program.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any civilian employee of the Defense Intelligence Agency (DIA) who has been diagnosed as an alcohol/drug abuser by a physician and subsequently enrolled in an alcohol/drug abuse treatment program. Former employees who were undergoing treatment at time of termination are retained in the file for two years and other former employees who were enrolled in a program less than two years before their termination may also be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains employee intake and follow-up records, initial interview forms, counselor observations and impressions of employee's behavior and rehabilitation progress, copies of medical consultation and procedures performed, results of bio-chemical urinalysis for drug abuse, and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the authority contained in the National Security Act of 1947, (10 U.S.C. 133d) the Secretary of Defense issued Department of Defense Directive 5105.21 creating DIA as a separate agency of the Department of Defense under his direction and herein charged the Director, DIA, with the responsibility for the maintenance of necessary and appropriate records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Blanket "routine uses" for DIA systems of records do not apply to this system of records.

Records concerning the identity, medical diagnosis, prognosis, or treatment of any person irrespective of whether or when the individual ceased treatment, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or

directly or indirectly assisted by any department or agency of the United States, are confidential and may be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C. section 1175, (as amended) and Title 42 U.S.C., section 4582 (as amended). Therefore, the record in the system may be disclosed outside DIA:

To government personnel for the purpose of obtaining benefits to which the person undergoing treatment is entitled;

To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation;

To appropriate elements within the Department of State, Department of Justice and Office of Personnel Management when required for actions relative to the employees employment, access to classified material or areas;

To a court of competent jurisdiction upon authorization by an appropriate order. Any safeguards against unauthorized disclosure imposed by the court in its order shall be honored.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders. (manual).

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes, or locked cabinets and are accessible only to personnel who are properly screened, cleared and trained in the protection of this information and have a need for access in connection with their official duties.

RETENTION AND DISPOSAL:

Records are maintained in the DIA personnel office, and destroyed two years after the individual leaves the treatment program or the case is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant for Equal Employment Opportunity, Defense Intelligence Agency, Washington, D.C. 20301.

NOTIFICATION PROCEDURES:

To obtain information as to whether this system of records contains information pertaining to you, submit a written request to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301. Include in your request your full name, current address, telephone number and social security account number or date of birth. You may hand-carry your requests addressed as above to Room 3E–233, Pentagon, Washington, D.C.

RECORD ACCESS PROCEDURES:

All requests for copies of records must be in writing; and must include in your request your full name, current address, telephone number and social security account number or date of birth. State whatever cost is acceptable or acceptable up to a specified limit. Mail requests to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301, or personally deliver them to Room 3E–223, Pentagon, Washington, D.C.

CONTESTING RECORD PROCEDURES:

An individual who disagrees with the initial determination of DIA, with respect to his or her request, may file a request for administrative review of that determination. Requests must be in writing and made within 30 days of the date of notificaton to the individual of the initial determination. The requester must provide a statement setting forth in reasons for his or her disagreement with the initial determination and provide material or information to support the appeal. Mail your requests to: CAO (PA 1974), Defense Intelligence Agency, Washington, D.C. 20301, or personally deliver them to Room 3E–223, Pentagon, Washington, D.C.

RECORD SOURCE CATEGORIES:

Personal interviews, personal history statements, abstracts or copies of pertinent medical records, abstracts from personnel records, results of tests, physician's notes, observations from employee's behavior, related notes, papers, and counselor and/or clinical director.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–7037 Filed 3–15–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Metropolitan Petroleum Company, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Metropolitan Petroleum Company, Inc., 3675 N.W. 58th Street, Miami, Florida 33142. This Proposed Remedial Order charges Metropolitan Petroleum Company with pricing violations in the amount of $173,259.09, connected with sales of motor gasoline during the period March 1, 1979 through July 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Atlanta Office, Economic Regulatory Administration, 1655 Peachtree Street, N.W., Atlanta, Georgia 30367, telephone (404) 881–2661. On or before March 31, 1982, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Penn. Ave. NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 26th day of February 1982.

William R. Gibson,

Deputy Director, Atlanta Office, Economic Regulatory Administration.

Concurrence.

Susan P. Tate,

Deputy Regional Counsel.

[FR Doc. 82–7004 Filed 3–15–82; 8:45 am]

BILLING CODE 6450–01–M

Anchor Distributors, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Anchor Distributors, Incorporated, 7950 N.W. 58th Street, Miami, Florida 33166. This Proposed Remedial Order charges Anchor Distributors with pricing violations in the amount of $164,845.01, connected with sales of motor gasoline during the period January 1, 1980 through March 31, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Atlanta Office, Economic Regulatory Administration, 1655 Peachtree Street, N.W., Atlanta, Georgia 30367, telephone (404) 881–2661. On or before March 31, 1982, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Penn. Ave. NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 26th day of February 1982.

William R. Gibson,

Deputy Director, Atlanta Office, Economic Regulatory Administration.

Concurrence.

Susan P. Tate,

Deputy Regional Counsel.

[FR Doc. 82-7003 Filed 3-15-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER82-211-000]

Utah Power & Light Co.; Order Denying Motion to Reject, Accepting for Filing and Suspending Revised Rates Under Section 205, Accepting for Filing and Ordering a Hearing on Revised Rates Under Section 206, Granting Summary Dispositions, Granting Interventions, and Establishing Price Squeeze and Hearing Procedures

Issued March 10, 1982

On January 8, 1982, Utah Power & Light Company (UP&L) tendered for filing revised rates for service to UP&L's firm tariff resale customers.[1] These rates would provide for an increase in jurisdictional revenues of approximately $23,600,000 for the twelve-month period ending December 31, 1982. UP&L proposes an effective date of March 11, 1982, with respect to service to all of its customers but one; with respect to the City of Manti, Utah. UP&L proposes to make the rates effective prospectively from the issuance of a final Commission order pursuant to section 206 of the Federal Power Act.

Notice of the filing was issued on January 13, 1982, with responses due on or before February 2, 1982. On February 2, 1982, the Sierra Pacific Power Company (Sierra Pacific) filed a petition to intervene. Sierra Pacific states that it has as yet been unable to review the filing in detail because of a lack of supporting data; Sierra Pacific does note several cost of service and rate design matters which it believes may be improper and so asks for a hearing at which it may pursue these and other matters.

On February 2, 1982, the City of Manti, Utah (Manti) filed a protest and petition to intervene. Manti requests the Commission to order a hearing on the proposed rates but raises no substantive issues.

On February 2, 1982, the Tri-State Intervention Group (Tri-State)[2] filed a protest and petition to intervene. Tri-State contends that the filing should be rejected because it fails to comply with the requirements of § 35.13 of the Commission's regulations in that it provides insufficient support for the Period II estimates and adjustments. In the alternative, Tri-State states that UP&L's failure to provide such support and other cost of service matters as well as the excessive requested return on common equity, the possibility of a price squeeze, and the hardship that would result from a shorter suspension require suspension for the maximum five months.

On February 17, 1982, UP&L filed a response. UP&L urges that its filing not be rejected as its filing is in substantial compliance with the regulations, the volume and cost of providing the documents sought by Tri-State would make the production burdensome, these materials will be made available for discovery, and the Company has made a good faith effort to comply with the regulations. UP&L further contends that its treatment of the various cost of service matters is appropriate and that a five month suspension would be unjust and inequitable. UP&L also challenges the allegations of price squeeze.

Discussion

Initially, the Commission finds that participation in this proceeding by the intervenors is in the public interest. Therefore, the petitions to intervene will be granted.

With respect to the motion to reject the filing, inasmuch as UP&L's submittal substantially complies with the Commission's filing requirements, Tri-State's motion to reject will be denied.[3]

Our analysis indicates that UP&L's revised rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

We have recently addressed the considerations underlying the Commission's policy regarding rate suspensions. *West Texas Utilities Company*, Docket No. ER82-23-000, (February 26, 1982). As explained there, where our preliminary analysis indicates that the increased rates may be unjust and unreasonable, but may not be substantially excessive, as described in *West Texas*, we shall suspend the rates for one day. Where, however, as here, our preliminary analysis indicates that the rates may be substantially excessive, we shall suspend the rates for the maximum period. Accordingly, we shall suspend the rates for service other than to Manti for a period of five months to become effective, subject to refund, on August 11, 1982. We note that revised rates for service to Manti will not become effective until the issuance of a Commission order determining a just and reasonable rate.

In Opinion No. 113,[4] the Commission affirmed the Presiding Judge's finding in that proceeding that Moon Lake, due to its load characteristics, should not have been included in the RS-3 customer class but rather should have been included in the RS-4 customer class. UP&L, in the instant filing, has again placed Moon Lake in the RS-3 customer class without demonstrating any changed circumstances which would require its reclassification. Accordingly, summary disposition is appropriate and we shall require UP&L to file revised rates and a revised cost of service reflecting the inclusion of Moon Lake in the RS-4 customer class.

We note that UP&L has functionalized general plant on a basis other than labor ratios. We have held that general plant should be allocated on the basis of labor ratios but we also have indicated that labor ratios need not be used if the company meets its burden of demonstrating that labor ratios are unreasonable when applied to that company, not merely that the company's alternative method might be reasonable.[5] UP&L bears this same burden.

In accordance with the Commission's policy established in *Arkansas Power and Light Company*, Docket No. ER79-339, (August 6, 1979), we shall phase the price squeeze issue raised by Tri-State. As we have noted in prior orders, this procedure will allow a decision first to be reached on the cost of service, capitalization, and rate of return issues. If, in the view of any of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

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[1] *See* Attachment A for customers and rate schedule designations.

[2] The Tri-State Intervention Group consists of Deseret Generation & Transmission Co-operative of Sandy, Utah on its own behalf and on behalf of its members; Mexican Hat Association of Mexican Hat, Utah; Strawberry Water Users of Payson, Utah; the cities of Blanding, Brigham, Levan, Nephi, Price, and St George, Utah; and the cities of Dubois and Soda Springs, Idaho.

[3] *See Municipal Light Boards of Readings and Wakefield, Massachusetts* v. *FERC*, 450 F.2d 1341 (D.C. Cir. 1971).

[4] *Utah Power & Light Co.*, Docket No. ER-79-121 (February 23, 1981) (Opinion No. 113), *order on reh.*, (April 24, 1981) (Opinion No. 113-A).

[5] *Southern California Edison Co.*, Docket No. ER81-177-000 (February 13, 1981); *Duke Power Co.*, Docket No. ER80-473 (August 19, 1980); *Lockhart Power Co.*, Docket No. ER80-490 (August 19, 1980). *See Minnesota Power & Light Company*, Docket Nos. E-9499, *et al.* (August 3, 1978) (Opinion No. 20), *order on reh.*, (October 30, 1978) (Opinion No. 20-A).

The Commission orders

(A) Tri-State's motion to reject the filing is hereby denied.

(B) UP&L's revised rates for service to customers other than the city of Manti, Utah are hereby accepted for filing, as modified by summary disposition, and are suspended for five months from sixty days after filing to become effective, subject to refund, on August 11, 1982. UP&L's revised rates for service to the city of Manti, Utah are hereby accepted for filing and set for hearing to be effective prospectively pursuant to a Commission order determining a just and reasonable rate.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to the classification of Moon Lake as an R–3 customer. Within thirty (30) days of the issuance of this order, UP&L shall refile its rates and supporting cost data to reflect this determination.

(D) UP&L must meet a burden of demonstrating that the use of labor ratios is an unreasonable method of functionalizing general plant.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of UP&L's rates.

(F) The petitions to intervene in this proceeding are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order of the Commission in this proceeding.

(G) The Commission staff shall serve top sheets in this proceeding on or before March 24, 1982.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration or price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

UTAH POWER & LIGHT COMPANY

[Docket No. ER82–211–000]

Dated: January 7, 1982; Filed: January 8, 1982

Designation	Supersedes sheets[1]
FPC Electric Tariff Original Volume No. 1	
Schedule RS–1:	
Thirty-First Revised Sheet No. 1.	Thirtieth Revised Sheet No. 1.
Tenth Revised Sheet No. 4.1.	Ninth Revised Sheet No. 4.1.
Tenth Revised Sheet No. 4.2.	Ninth Revised Sheet No. 4.2.
Schedule RS–2:	
Tenth Revised Sheet No. 5.1.	Ninth Revised Sheet No. 5.1.
Tenth Revised Sheet No. 5.2.	Ninth Revised Sheet No. 5.2.
Schedule RS–3:	
Ninth Revised Sheet No. 5A.1.	Eighth Revised Sheet No. 5A.1.
Ninth Revised Sheet No. 5A.2.	Eighth Revised Sheet No. 5A.2.
Schedule RS–4:	
Second Revised Sheet No. 5A.3.	First Revised Sheet No. 5A.3.
Second Revised Sheet No. 5A.4.	First Revised Sheet No. 5A.4.

[1] These sheets were filed January 8, 1982, in compliance with *UP&L* Opinion No. 113, ordering paragraph (B) in Docket No. ER79–121 issued February 23, 1981.

[FR Doc. 82–6999 Filed 3–15–82; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from the Pennzoil Company in settlement of enforcement proceedings brought by the DOE's Office of Special Counsel.

DATES AND ADDRESSES: Applications for refund must be postmarked within 90 calendar days following publication of this notice in the **Federal Register,** and should be addressed to Pennzoil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 12th St. and Pennsylvania Ave., NW., Washington, D.C. 20461, (202) 633–8377.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the decision and order set out below. The decision and order relates to a consent order between the Pennzoil Company, a producer and refiner of crude oil, and the Office of Special Counsel of the DOE's Economic Regulatory Administration. *See* 46 FR 36927 (1981). The consent order settles nearly all disputes between the DOE and the firm with regard to pennzoil's compliance with the DOE price and allocation regulations. Under the terms of the consent order, Pennzoil has deposited $3,000,000 into an escrow account. It is stipulated in the consent order that the refund amount is in settlement of possible enforcement actions based upon allegations that Pennzoil violated the DOE regulations during the period March 6, 1973, through December 31, 1980.

The Office of Hearings and Appeals previously issued a proposed decision and order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The proposed decision and order discussing the distribution of funds obtained through the Pennzoil consent order was issued on December 29, 1981. 47 FR 329 (1982).

The final decision and order, published concurrently with this Notice, reflects our analysis of comments received from interested parties. As we indicate in the decision, applications for refund from the escrow fund may now be filed. Applications will be accepted provided they are postmarked no later

then June 8, 1982. *See* 10 CFR 205.283. We will accept applications from all persons who claim that they have been injured by Pennzoil's alleged regulatory violations during the period covered by the consent order. In order to establish entitlement to a portion of the consent order fund, a purchaser must establish, in addition to proof of purchase of the volume claimed, that the purchaser did not pass through price increases to its own customers. A party that wishes to file an application for refund based on an alleged allocation violation must have previously made a complaint about the alleged violation and must furnish information to support its claim of injury. The specific information required in an application for refund is set forth in the decision and order.

The decision does not establish mechanical standards for the proper allocation of funds among successful claimants such as the *pro rata* volumetric distribution used in a number of previous refund cases. Instead, the decision discusses a number of equitable factors which will be considered in the process of allocating funds among successful claimants. The decision and order also reserves the question of the proper disposition of any remaining consent order funds during the second stage of the refund process until completion of the first stage claims procedure.

Dated: March 10, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 10, 1982.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Office of Special Counsel: In the Matter of Pennzoil Company.
Date of Filing: August 11, 1981.
Case Number: BEF-0072.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Special Counsel (OSC) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, on August 11, 1981, the OSC filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with the Pennzoil Company (Pennzoil). The refunds which Pennzoil agreed to make under the consent order to compensate for its alleged violations of the DOE regulations were in the following amounts: (i) $3 million to be distributed in accordance with the directives of the OHA pursuant to special refund proceedings; (ii) $3.5 million to certain electric utilities whose rates are subject to fuel adjustment clauses, provided that such entities agreed to execute an appropriate release and waiver of claims against Pennzoil; and (iii) $3.5 million to the Defense Fuel Supply Center. *See* Consent Order §§ 402-03. The consent order further provided that to the extent any funds remained from category (ii), all residual funds would be deposited with the category (i) funds for distribution through the special refund proceedings. All category (ii) funds were distributed by Pennzoil. Consequently, the sum of $3 million plus interest is now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the Office of Hearings and Appeals regarding its final distribution.

Pennzoil is a "refiner" and a crude oil "producer" as those terms were defined in 10 CFR 212.31. During the relevant time periods, Pennzoil was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subparts D and E. Those Subparts governed the maximum prices that could lawfully be charged by Pennzoil in the sale of crude oil, fuel oil, motor gasoline and other covered products. In addition, Pennzoil was subject to the Mandatory Petroleum Allocation Regulations set forth in 10 CFR Part 211.

In connection with its compliance activities, the OSC conducted an extensive audit of Pennzoil's pricing and allocation practices, including the manner in which the firm applied the federal petroleum price and allocation regulations with respect to its importation, refining, and sale of crude oil and covered petroleum products during the period March 6, 1973 through December 31, 1980. Following extensive negotiations, the DOE and Pennzoil entered into a consent order in order to resolve, with certain exceptions, all of the issues raised during the OSC's audit.(*1*) The proposed consent order was executed on January 26, 1981 and comments were requested. *See* 46 FR 8101 (1981). The OSC received comments from two parties.(*2*) After the regulatory comment period had expired and the OSC had considered all of the comments which it had received, a slightly modified consent order was adopted as a final order on July 9, 1981. *See* 46 FR 36927 (1981).(*3*)

On December 29, 1981, we issued a proposed decision and order in this proceeding which tentatively established a two-stage process to be used in adjudicating claims to the Pennzoil settlement fund. *See* 47 FR 329 (January 5, 1982). In the first stage, those firms who claim that they have been adversely affected by Pennzoil's alleged violations would be permitted to file Applications for Refund. Firms claiming that they were injured by Pennzoil's alleged allocation violations could file refund applications in the same manner as firms who claimed to be overcharged as a result of alleged pricing violations. Each application would be analyzed, and determinations on the merits of each would be made. All meritorious claims would then be paid. We suggested that refunds to persons who establish an entitlement to a refund would be made on a volumetric basis, *i.e.* in the same proportion as the volume of their purchases corresponded to the total volume of Pennzoil sales during the consent order period. We also proposed as the second stage of the refund process that additional refunds might be made to rate-regulated utilities or to states in which the products associated with the alleged overcharges by Pennzoil were marketed. In the alternative, we suggested that in the event that distribution schemes for the second stage prove to be inappropriate because of administrative costs or the lack of accurate information, the portion of the settlement fund which would go undistributed after the payment of claims be deposited in the United States Treasury. Finally, we stated that comments concerning the Proposed Decision should be submitted within 30 days of its publication in the **Federal Register**. *See* 47 FR at 329.

The purpose of this decision is to establish the mechanism by which firms wishing to make a claim against the Pennzoil consent order fund may file applications for refund. We will first discuss the comments which we received concerning the first-stage refund procedure which we suggested proposed in the December 29 Proposed Decision and Order. Then we will discuss in detail the application for refund procedures that we have decided to adopt. We will not, however, determine procedures for the second stage of the refund process in this decision. Our determination concerning the final disposition of any residual funds will necessarily depend on the size of the fund. *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (hereinafter cited as *Coline*). It is therefore premature for us to reach the issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious claims have been paid. (*4*)

Jurisdiction and Authority to Fashion Refund Procedures

In our December 29 proposed determination and in other recent Decisions, we have discussed at length our jurisdiction and authority to fashion refund procedures. *See* 47 FR at 329; *Coline*; *Office of Enforcement*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*). We tentatively decided in the proposed decision to exercise jurisdiction over the funds received by the DOE in settlement of the enforcement proceedings underlying the Petition for the Implementation of Special Refund Procedures in the case of Pennzoil. None of the commenters has challenged the jurisdiction or authority of the Office of Hearings and Appeals to fashion refund procedures in this case. We will therefore grant the OSC's Petition and for the reasons stated in the proposed determination assume jurisdiction over the distribution of the Pennzoil consent order funds.

Comments on the Merits of the Proposed Two Stage Distribution

In our initial consideration of this matter, we found that "[B]ased upon our experience with Subpart V cases, we believe that the distribution of funds to overcharged persons should generally take place in two stages." 47 FR at 331. In several comments it was noted that the Pennzoil case is different from Subpart V cases which we have previously

decided. This case involves a "global" consent order which encompasses Pennzoil's sales and allocation of crude oil as well as a full slate of refined products over a seven year period. *Compare Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*) (involving only motor gasoline sold at non-company operated locations) *with Office of Special Counsel*, 9 DOE ¶ ——— Case No. BEF–0073 (February 18, 1982) (hereinafter cited as *Tenneco*). These commenters therefore suggested that the distribution of money in the Pennzoil case should be handled in a manner different from that proposed in the December 29 determination.

After careful consideration of the positions advanced by the commenters, we have concluded that our original proposal should be modified. In this section we will discuss the pros and cons of the various alternative refund plans which have been advocated by the commenters. Following our discussion of all of the comments which we received, we will outline the modified two-staged procedure which we have decided to adopt.

Comments were filed on behalf of three states: New York, Oregon, and Minnesota. The State of New York was in favor of the proposed two stage procedure as set out in the December 29 decision. The New York comments, which will not be discussed at this time, addressed proposals regarding the ways in which the states should utilize the funds in the event of a second-stage distribution. The State of Oregon suggests a one-stage distribution in which the Pennzoil fund would be divided among the states in proportion to Pennzoil's sales of refined products in those states. In support of its proposl, Oregon contends that an individual citizen filing for an application for refund would have great difficulty in establishing that he or she was actually injured by the alleged violations. Oregon maintains that the proposed first stage should be abandoned because it is unlikely to further the objectives of the Pennzoil Subpart V proceeding. Minnesota, on the other hand, generally supports the two stage process suggested in the Proposed Decision. However, the Minnesota comments suggests that a portion of the funds should be set aside at the first stage to ensure restitution to small consumers of Pennzoil products.

We have carefully considered the states' comments and have concluded that we should nevertheless adopt a two stage distribution process commencing with a first stage which will permit parties to file applications for refund. The special refund process is designed to refund money to persons who were injured by actual or alleged regulatory violations. *Coline*, 9 DOE at 85,451. Thus, we cannot accept Oregon's assertion that the first stage should be eliminated merely because purchasers of Pennzoil products may find it difficult to establish valid claims to a portion of the consent order funds. Injured parties should be accorded the opportunity to make claims against the Pennzoil fund, and we decline to conclude summarily without an examination of the merits of each claim that there are none which are meritorious as a matter of law. We are also rejecting Minnesota's suggestion that we set aside a portion of the fund for small consumers. The consent order which Pennzoil and OSC signed does not contain a provision for setting aside any portion of its funds especially for the benefit of a certain class of consumers, and it is well recognized that the scope of a consent order must be discerned within its four corners. *United States v. Armour & Co.*, 402 U.S. 673 (1971). Although we will not adopt Minnesota's specific suggestion, we are prepared to accept refund applications submitted on behalf of a class of consumers.

Comments Concerning Eligible Claimants

Several of the commenters requested that we specifically identify which parties are eligible to file applications for refund in the first stage of the Pennzoil special refund proceedings. In addition, some commenting parties suggested that certain parties should be excluded from eligibility.

Many of the commenters pointed out that in our prior discussion of eligible claimants we referred primarily to Pennzoil customers who were claiming injury due to alleged overcharges in sales of petroleum products. We did not intend to exclude claims based on alleged allocation violations. Our major intent in adopting the final procedures for the first stage is that *all* parties, with only the limited exceptions set out below, who wish to file *any* claim for a portion of the Pennzoil consent order should file an Application for Refund on or before June 14, 1982. Potential claimants may include, for example, firms who claim injury as purchasers of any type of covered or allocated products from Pennzoil during the period covered by the consent order, whether those parties are direct purchasers or downstream purchasers. Parties claiming injury due to alleged violations by Pennzoil of the DOE allocation regulations, including those governing the Domestic Crude Oil Entitlements Program, 10 CFR 211.67, may also file. No party will have a priority claim on the fund. As indicated in our discussions of the Minnesota comments, we will accept applications filed on behalf of groups of Pennzoil customers as well.

In our December 29 discussion of eligible claimants, we stated that "[A]bsent special circumstances, those parties which already received refunds will not be eligible for further refunds." 47 FR at 331. In response to the inquiries we have received concerning this statement, we specify that only parties who have already received refunds pursuant to the July 9, 1981 consent order that underlies this proceeding will be presumed to be ineligible to file, and this ineligibility will extend only to the products to which their refunds related. For example, a firm which received a refund as a residual fuel oil customer pursuant to section 403 of the consent order could still file an application for refund with respect to its purchases of some other product provided it has not signed an applicable waiver.

In addition, we have determined here as in previous cases that there is an additional class of potential claimants who may be presumed to have suffered no injury from Pennzoil's regulatory practices. Those parties are firms who made spot purchases of Pennzoil crude oil or petroleum products. As we stated in *Vickers:* These customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers. *Vickers*, 8 DOE at 85,396–97. We believe that the same rationale holds true in the present case. Consequently, we will not consider applications for refund from firms who made only spot purchases from Pennzoil.

In *Tenneco* it was suggested that we exclude from eligibility any party claiming injury due to alleged allocation violations who had not previously filed a complaint with the DOE concerning the alleged violation. *See Tenneco*, 9 DOE ¶ , Case No. BEF–0073, *slip op.* at 8. We found in that case that this limitation on such allocation claims was reasonable because any firm that was injured by an allocation violation would have experienced some direct effect and have been more immediately aware of its injury than a firm whose purported injury was due to alleged overcharges whose effect could be marginal. We would expect that a party who was injured by a interruption of its supply of an allocated product would immediately seek redress by notifying the appropriate agency officials, *see* 10 CFR 205.201(a)(d), or by filing a private lawsuit under section 210 of the Economic Stabilization Act. Thus, we have concluded that while imposing a "prior complaint" limitation on allocation claims would tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, this limitation would present no danger to parties who were actually injured by Pennzoil's alleged allocation violations. Accordingly, as in *Tenneco* we will presume that a party who had not complained of alleged allocation violations by Pennzoil prior to the date of the consent order does not have a meritorious claim. *See* 10 CFR 205.282(e).

Finally, we are urged by one commenter to exclude regulated firms in general and commercial airlines in particular from eligibility to file an application. The commenter maintained that due to the deregulation of many of these firms it is not clear that refunds to those parties would be passed through to their customers in the form of rate reductions. In addition, the commenter maintained that in the case of certain airlines that are currently experiencing operating losses, any refund amount would only be used to reduce those losses rather than to reduce ticket prices.

While we believe that the factors mentioned should be included in our consideration of particular applications for refund and in structuring any mechanism for refunds, we will not exclude this group of claimants without an examination of the merits of each case. We are confident that after an examination of the circumstances in a particular case, appropriate conditions and monitoring mechanisms can be established to insure a passthrough of benefits. Consequently, regulated firms will be eligible to file applications for refund.

To summarize our discussion above, we do not intend to exclude *any* party who believes itself eligible for a refund from filing an application. An applicant may, by demonstrating special circumstances, overcome any presumption that we have discussed above. We believe that a liberal approach to eligibility will best serve the purpose of refunding money to persons who may have been adversely affected by Pennzoil's alleged regulatory violations.

Comments on Required Standard of Proof for Overcharge Claims

We proposed in our December 29 determination that claimants who are resellers or who are involved in the production or distribution of goods or services be required to demonstrate that, during the period covered by the consent order, they would have kept their prices for petroleum products or goods and services at the same level had the alleged overcharges not occurred. In other words, we stated that a claimant should demonstrate that at the time it purchased covered products from its supplier, market conditions would not permit it to pass through the additional costs associated with the alleged overcharges. In addition, we suggested that a reseller of petroleum products must have maintained until January 28, 1981, the date on which the President decontrolled all remaining covered products, a "bank" of unrecovered product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. Finally, we stated that a purchaser who is an ultimate consumer and is not engaged in the sale of goods or services would not have to make a showing that it absorbed any unlawful price increases.

Some parties who submitted comments suggested certain additional classes of claimants that might be excused from showing injury at all. In addition, we received comments regarding the proposed standard of proof which ranged from assertions that the standard was too lenient to assertions that the standard would be too difficult to meet. We continue to believe that "this inquiry into whether a claimant was injured in fact is most appropriate in a proceeding of this type where refunding moneys obtained through DOE enforcement proceedings is the primary focus." *Coline*, 9 DOE at 85,051. In establishing the standard of proof that a claimant must meet, we must strike a balance between a level so low that it would grant windfall benefits to firms who had suffered no injury and a level so high that only a few large firms would have the resources necessary to prepare an application. With that principle in mind we turn to the comments concerning what particular kind of proof of injury should be required of claimants.

Three potential claimants ask to be added to the class of claimants who would not be required to offer any proof that they absorbed the alleged overcharges. Those potential claimants are The Transportation Group, and *ad hoc* organization of trade associations whose members are regulated transportation companies; Systems Fuels, Inc., a nonprofit corporation which acts as a fuel purchasing agent for several public utilities; and the National Council of Farmer Cooperatives. Those parties contend that any overcharges which they had suffered would have been channeled to their customers by the regulatory bodies or the private contractual agreements that control the prices they may charge. They also noted that any refunds which they receive would automatically be passed through to their customers. They therefore contend that they should be included with the class of ultimate purchaser claimants, who need only demonstrate that they purchased a specific quantity of product which was sold by Pennzoil during the relevant time period in order to qualify for refunds. In addition, Systems Fuels suggested that we substitute for the showing of injury a provision requiring a regulated refund recipient to notify the particular regulatory agency or agencies concerned of the refund. *See Office of Special Counsel*, 4 DOE ¶ 82,511 (1979).

We have decided that the regulated firms' proposal is meritorious because it will assist us in distributing refunds in an efficient, cost-effective and equitable manner. *See* 10 CFR 205.282. The OSC has reviewed the operation of the agencies which regulate transportation companies and utilities and has determined that refunds are indeed factored into their rate making systems. 46 FR at 29500–01. Although there are not independent regulatory bodies which oversee cooperatives' price setting, we believe that refunds to any agricultural cooperative will likewise directly influence the prices charged to its member customers. These cooperatives are owned by their customers, and the ultimate consumers of the petroleum products purchased by the cooperative will therefore receive the benefit of the refund either as a price reduction or as a distribution at the close of the cooperative's fiscal year. *See Tenneco*, slip op. at 11.

Consequently, we have concluded that refund applications from firms whose prices for goods or services are regulated by a government agency or by the terms of a cooperative agreement will not be required to show that they absorbed the alleged Pennzoil overcharges. Instead, those applicants should supply us with a full explanation of the manner in which refunds will be passed through to their customers in the form of lower prices or better service. In addition, these applicants' receipt of refund money will be conditioned on notice to the appropriate regulatory body or membership group.

We suggested in our proposed decision a further group of purchasers that might be excused from having to document more than the fact that they purchased products from Pennzoil during the relevant period of time. We stated that we would consider establishing a threshold level of purchases under which applicants, primarily small firms and individuals, would not be required to make a detailed showing of actual injury. For example, in *Vickers* we set a purchase threshold of 50,000 gallons of motor gasoline per month. Firms with purchases below that level were permitted to claim a refund based upon that level of purchases without having to submit evidence concerning their banks of unrecouped product cost increases or prevailing market conditions which had prevented them from passing through the alleged overcharges. In addition, firms in the *Vickers* case who had purchased more than an average of 50,000 gallons per month were excused from the requirement of showing that the effects of the alleged violations were not passed through, provided that they were willing to limit their claims to the 50,000 gallons per month level.

After careful consideration we have concluded that it is in the best interests of efficient resolution of these proceedings to establish a threshold level of purchases below which a claimant need not demonstrate injury. If we were to adopt a requirement that every applicant supply full documentation of its injuries, it would discourage small applicants since the expense of preparing such an application could well exceed the refund to be eventually gained. For this reason we have concluded that a similar threshold figure should be established in this refund proceeding as well.

Based on our experience in the *Vickers* proceeding we have decided to set the threshold figure at 50,000 gallons per month or 600,000 gallons annually. Businesses of this size will generally be individual retailers or large consumer accounts. We continue to believe that a requirement that relatively small purchasers of covered products such as motor gasoline establish that they did not pass through price increases would prove so great a burden on those firms' recordkeeping and accounting capabilities that they might be precluded from seeking any refunds. *See Vickers*, 8 DOE at 85,396. Consequently, in the interest of fostering the restitutionary objectives of the Subpart V process, we will establish the threshold figure discussed above.

Now that we have enumerated those types of Pennzoil customers that will not be required to demonstrate that they absorbed unwarranted price increases, we will focus upon what type of proof those parties who *are* required to make that showing will be obliged to make. As we stated in the proposed decision, larger firms are more likely to have maintained more detailed records which could be marshalled to reflect how their pricing decisions were made. Furthermore those larger firms have greater resources and will likely be claiming larger refund amounts. Therefore we have concluded that we will retain as an element of the refund process a requirement that firms seeking sizeable refunds demonstrate that they did not pass through the effects of Pennzoil's alleged regulatory violations to their customers.

Standard of Proof for Entitlement and Allocation Claimants

Several comments noted that although we stated in the proposed decision that any party who wished to make a claim against the Pennzoil settlement fund would be permitted to file an Application for Refund, we failed to establish proposed guidelines for deciding claims submitted by parties claiming injury due to alleged violations of the entitlements program regulations or the allocation regulations.

With regard to the entitlements program, 10 CFR 211.67, the consent order expressly covers Pennzoil's compliance with those regulations without making any provision for any particular remedial action to be taken. Firms claiming injury due to Pennzoil's alleged violations of the entitlements regulations may therefore file applications for refund. However, we doubt that an individual participant in the entitlements program can demonstrate a particularized injury to itself upon which it could base a claim to the consent order funds. If any entitlements violations by Pennzoil took place, their effect would have been spread equally among all participants in the program and ultimately, to all consumers in the form of higher prices for all refined products. *See Alkek*, 47 FR at 2197–98. Therefore at this stage we are unable to specify a standard of proof for claims based on alleged entitlement violations other than to state that a claimant must affirmatively demonstrate that it has been injured by the alleged violation.

The standards which we are adopting for deciding claims filed by injured Pennzoil allocation customers will be considerably more flexible than those used in issuing a Remedial Order under 10 CFR Part 205, Subpart O. We have determined that an applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. An application should contain the best possible evidence concerning the proportion of the claimant's supply which the withheld crude oil or petrolem product represented, the availability of substitute product at the time of the alleged violation and the impact on the claimant's business such as decreased sales volumes or loss of customers. In addition, a claimant must also show that the injury was not passed on to its customers. Although we will not engage in a time-consuming legal and factual analysis leading to a precise measure of damages, we wish to emphasize that the burden of establishing eligibility for a refund rests on the claimant. As we discuss in greater detail below, our determination concerning the amount to be paid an allocation applicant may be affected by a consideration of equitable factors such as, for example, whether the alleged violation had a significant adverse impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action to enforce its rights.

Comments Concerning Overall Procedures to Be Adopted

Pennzoil has also filed comments that will now be addressed. Pennzoil objects to our proposal that the claims of all successful applicants would be paid on a volumetric basis, *i.e* based on the proportion of the product purchased by the applicant to the total amount of products (whether motor gasoline, diesel fuel, No. 2 fuel oil, natural gas liquids or NGL products, crude oil or condensate) sold by Pennzoil during the relevant period. Pennzoil asserts that such a result in this case would not be a practical or sensible approach due to the "global" nature of the settlement and consent order involved. Pennzoil states that this approach would constitute a deterrent for potential claimants because the potential recovery could well be less than the cost of asserting and substantiating the claim. It is Pennzoil's position that it cannot be in the interest of restitution to impose a "predetermined artificially low volumetric limitation on the ability of an individual customer to recover against the fund." *See* Pennzoil's Comments at 6. Pennzoil believes that to the maximum extent possible, all claims made should be paid in full. According to the firm, if by following this approach the fund becomes exhausted and leaves no residual funds for subsequent distributon, the true intent of the consent order will be effectuated.

We have previously used a volumetric method of allocating funds to claimants because it is an administratively efficient method for determining what portion of a settlement fund shall be alloted to each particular claimant. Moreover, it is a useful approximation of injury in the treatment of overchange claimants because it offers an easy method of calculation for firms who are unable to quantify their alleged injury. However, with the exception of *Tenneco*, no previous case in which we have employed this method has involved a "global" consent order such as the one underlying this proceeding, which settles alleged violations of many different aspects of the Mandatory Petroleum Price and Allocation Regulations.

This is the second Subpart V proceeding that involves allocation claims. In addition, in the previous cases the fund has been large enough in proportion to the total volume of the particular products involved in the consent order to yield a significant per gallon refund. For example, in *Vickers* we estimated that a successful applicant would receive approximately $.002002 per gallon of purchase made during its consent order period. The actual figure used was $.002184 per gallon. *See Uban Oil Co.*, 9 DOE ¶ ——, Case No. HEX–0006, slip op. at 7 (February 25, 1982). In contrast, our preliminary estimates show that based on Pennzoil's sales for the period covered by the consent order and assuming all of the $3 million of the fund is available for volumetric distribution, an applicant's possible recovery could at most be $.000375 per gallon, or approximately 17% of the Vickers pro rata refund amount. We have therefore concluded that the adoption of a "*pure*" volumetric plan of distribution as set out in *Vickers* would not necessarily be the best mechanism for accomplishing the restitutionary goals of the special refund process and the Pennzoil consent order.

As in all Subpart V cases, the primary goal of the Pennzoil refund process is to distribute the funds to those firms and individuals who were injured by the alleged violations which were settled in the underlying consent order. In recent decisions we have discussed the nature of the settlement process as it relates to the amount of consent order funds ultimately distributed to the intended beneficiaries of the Subpart V refund process. In *Alkek*, we noted that: The terms contained in each consent order, including the amount of the monetary settlement, were arrived at through negotiation. Although the amount of money remitted to the DOE can be viewed as based in part upon the magnitude of the violations alleged by the government, additional factors—such as each party's views as to the probable length, expense, and success of litigation—would normally influence the size of the monetary settlement. *Alkek*, 47 FR at 2197. Since any consent order is the result of compromise, the monetary amount of the settlement funds to be distributed is in all likelihood considerably less than the total amount of the economic injury suffered by the customers of the firm involved. *See Uban*, slip op. at 6. In addition, due to the difficulty of keeping records for the entire seven year period covered by the consent order, and the requirement that claimants provide evidence that the effects of the alleged violations were not passed through to their downstream customers, the total refund for which meritorious claims are submitted may be far less than the full amount of the settlement fund available for distribution. Therefore, we believe that it is fully consistent with the restitutionary objectives of the present proceedings to distribute more than a "pure" volumetric share of available funds to successful claimants.

Consequently, we will adopt an alternative mechanism. This mechanism will incorporate a modified version of the volumetric distribution scheme used in *Vickers*. We will multiply the number of gallons of Pennzoil products purchased by a qualified applicant by a factor computed using the total amount of money available for distribution as the numerator, and using Pennzoil's total sales (in gallons) of all covered products including crude oil minus the number of gallons attributed to the funds distributed pursuant to Section 402 of the consent order, as the denominator, to determine the claimant's minimum refund amount:

$$\text{no. of gallons purchased by claimant} \times \frac{\$3 \text{ million}}{\text{Pennzoil's Total Sales (gallons)} - \S\ 402 \text{ funds (gallons)}} = \text{claimant's minimum refund by amount}$$

Since this factor will be used to establish a "floor" or minimum amount a successful claimant could receive, it can assist a potential applicant in deciding whether or not to apply for a refund. In order to determine the final amount a claimant will receive, however, other factors will be taken into consideration as well in deciding the amount of a particular claimant's refund.

Because this is an equitable proceeding intended to make restitution to the Pennzoil purchasers who were injured by the alleged overcharges underlying the consent order, these other factors are so important that they should be considered in this case. *See generally Citronelle-Mobile Gathering, Inc. v. Edwards*, —— F. 2d ——, No. 5–60 (Temp. Emer. Ct. App. January 21, 1982) slip op. at 12. As noted above, the size of the fund available for distribution is likely to be less than the amount needed to make full restitution to the injured Pennzoil purchasers. The use of a "pure" volumetric mechanism would have the undesirable effect of placing a further artificial limitation on the amount of the refunds that are eventually received by successful claimants. Consequently, a consideration of the factors set forth below will result in a refund process that more fully achieves the restitutionary objectives of this proceeding. These factors include the following: (i) The amount of interest accumulated in the escrow account since the DOE received the $3 million from Pennzoil; (ii) the number of qualified claimants, and the aggregate volume of their purchases from Pennzoil compared to the amount of products sold by Pennzoil during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) market conditions prevalent during the consent order period; (v) the claimant's position in the distribution chain, *i.e.*, whether it is a refiner, reseller or ultimate consumer; and (vi) the manner in which the claimant's business is governed by federal, state or local regulatory agencies, or other relevant private contractual agreements such as those affecting agricultural cooperatives. As TECA stated in the Citronelle decision, the purpose of restitution is "to make the victims whole, 'so far as possible, and restored to a position where they would have been had it not been for' the unlawful violations * * *." *Id.*, slip op. at 10. Only by weighing and balancing the factors enumerated above will we be able to make the best possible restitution to those persons who can establish that they were injured by the alleged Pennzoil violations.

Pennzoil also suggested that OHA require potential claimants to sign disclaimer provisions to insure that any record, finding or conclusion which was made during the refund proceeding could not be used in either an administrative or judicial proceeding for the purpose of demonstrating liability on the part of Pennzoil for alleged violations of the DOE price or allocation violations. We believe that our previous discussion of the nature of the special refund process makes it clear that we will not permit the present Subpart V proceeding to be used to adjudicate Pennzoil's compliance with the DOE regulations. *See Tenneco*, slip op. at 19–20. Since our inquiry will be limited to whether an applicant's claim is valid under the standards discussed above, and since claims apparently will not be contested by Pennzoil, any record or finding which we shall make would not be sufficient to sustain a claim at law. However in order to emphaize the limited scope of this proceeding, we intend to incorporate in any order concerning an application for refund the following language: This order operates to distribute funds pursuant to Subpart V of the Department of Energy's procedural regulations, 10 CFR Part 205, and related to the Consent Order between the Pennzoil Company and the Department of Energy, effective July 9, 1981. It does not constitute an adjudication or determination of liability on the part of Pennzoil for alleged violations of DOE price or allocation regulations.

Application for Refund Procedures

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our Proposed Decision and Order, we have concluded that Applications for Refund should now be accepted from parties who purchased crude oil and refined petroleum products from Pennzoil. We shall now discuss the specific requirements for Applications for Refund that we have decided to adopt.

Applications for Refund of a portion of the Pennzoil consent order fund must be filed on or before June 14, 1982. *See* 10 CFR 205.283. We will consider all applications, although we may later impose a minimum dollar limit on claims. *See* 10 CFR 205.286(b). Applications made on behalf of a class of claimants will be considered on a case-by-case basis. An application must be in writing, signed by the applicant, and specify that it pertains to the Pennzoil consent order fund, Case Number BEF–0072. If the applicant is not a direct purchaser from Pennzoil, it should indicate from whom the crude oil or product was purchased and indicate what basis the applicant has for its belief that the product which it purchased originated from Pennzoil.

All applications for refund will be deemed to be for an amount in excess of $100 and therefore must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, 12th Street & Pennsylvania Avenue, NW., Washington, D.C. 20461. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application shall also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Pennzoil Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following information should be included in each application filed by a purchaser of Pennzoil products:

A. Each appliant should report its volume of purchases by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges, if any.

B. Each applicant should specify how it used or would have used the Pennzoil product, *e.g.*, as a petrochemical producer, refiner, reseller or ultimate consumer.

C. If the applicant is a refiner or reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981.[5] It should furnish the OHA with quarterly bank calculations for the entire period.

D. The applicant must state whether it or any of its affiliates have filed any other Applications for Refunds which might affect its level of banks.

E. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

F. An allocation claimant should specify the volume of product which it claims it was entitled to purchase from Pennzoil, and submit any other evidence available to document its claim. The material submitted should consist of the best available evidence to document the amount of profits lost as a result of the alleged violation, and should discuss the actions taken by the applicant to (i) obtain a replacement supply of the allocated product; and (ii) seek relief from or against Pennzoil. Allocation claimants will also be required to show that the effects of the alleged injury were not passed through to their customers or dissipated through the operation of regulatory mechanisms such as the entitlements program, 10 CFR 211.67.

G. The applicant should report whether it is or has been involved as a party in DOE or private, section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It Is Therefore Ordered That:

The refund amount provided by the Pennzoil Company will be distributed in the manner set forth in the foregoing Decision.

Dated: March 10, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(*1*) The matters excluded from the scope of the consent order were: (i) the matters involved in the case of *Pennzoil Co. v. DOE*, 480 F. Supp. 1126 (D. Del. 1979); (ii) Pennzoil's compliance with the entitlements regulations with respect to certain transactions occurring during the period July 1976 through December 1977 between Pennzoil and certain small refiners as part of a general industry investigation by DOE; and (iii) Pennzoil's compliance with DOE's regulations regarding "marginal" and "newly discovered" crude oil.

(*2*) The parties who submitted comments were The Transportation Group and the National Consumer Law Center. These parties have been included on the service list for this proceeding.

(*3*) The sole modification adopted by the parties was the elimination of provisions concerning Pennzoil's treatment of its banks of unrecouped product cost increases. See 46 Fed. Reg. 36927 (1981).

(*4*) See, however, the discussion of similar comments in Office of Enforcement, 8 DOE ¶ 82,597 (1981).

(*5*) Those resellers who did not elect to maintain bank calculations for the period May 1, 1980 through January 27, 1981, do not, of course, have to supply bank calculations for that period. *See* FR 27546 (1980).

[FR Doc. 82-7104 Filed 3-15-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Minority Economic Impact

Acceptance of Loan Applications

Notice is hereby given that pursuant to the authority contained in Section 211(e) of the Department of Energy (DOE) Organization Act, Pub. L. 95-91, Title II, as amended by Public Law 95-619, Title VI, Section 641, November 9, 1978, 92 Stat. 3284, classified to 42 U.S.C.A. 7141, the Office of Minority Economic Impact (OMEI) is now accepting applications for direct loans to minority business enterprises to assist such enterprises in financing bid or proposal preparation costs incurred in attempting to obtain Department of Energy (DOE) contracts, other agreements (such as a procurement contract, cooperative agreement, grant, loan or loan guarantee) or first-tier subcontracts with DOE operating contractors.

Information and application forms may be obtained from either U.S. Department of Energy, OMEI, MI-1, Room 5B-110, 1000 Independence Avenue S.W., Washington, D.C. (20585). Telephone (202)252-8383. Attention: Loan Program; or,

U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, California (94612). Telephone (415)273-7151. Attention: Minority business bid or Proposal Preparation Loan Program.

Provisions have been made in the application form to allow an applicant to submit certain information for preliminary review in advance of a specific loan request. This information must be updated at the time of loan request to reflect substantial changes. This procedure will facilitate the processing of loan applications and should result in a more expeditious decision on a loan application.

An eligible minority business enterprise is a firm including a sole proprietorship, corporation, association, or partnership which is at least 50 percent owned or controlled by a member of a minority or group of members of a minority. An individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a "minority" for purposes of eligibility under this program.

The maximum amount of money that can be borrowed for any one loan is $50,000. The duration of a loan will depend on the amount of money borrowed. For loans up to $5,000, maximum duration is 3 years 3 months; for loans from $5,001 to $25,000, maximum duration is 5 years 3 months; for loans in excess of $25,000, maximum duration is 8 years 3 months. Repayment of principal and interest will begin within 90 days following the first loan payout, usually.

The rate of interest charged for a loan will be fixed for the life of a loan and is established at the time of signature of a loan agreement The rate will take into account what the United States pays for money which it borrows.

The available funding for this program for Fiscal Year 1982 is approximately $2.225 million.

Additional information can be found in the final regulation for this program (10 CFR Part 800) at 46 FR 44686, September 4, 1981.

(Catalog of Federal Domestic Assistance Number 81.063; Office of Minority Economic Impact Loans)

Issued in Washington, D.C., March 9, 1982.

Rosslee G. Douglas,

Director, Office of Minority Economic Impact.

[FR Doc. 82-7005 Filed 3-15-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-2075-5]

Delegation of Authority to the State of New Mexico for Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information Notice.

SUMMARY: EPA Region 6 has delegated the authority for technical and administrative review of the Prevention of Significant Deterioration (PSD) program, the authority for source inspections for compliance under 40 CFR 52.21 and review of all compliance test reports submitted for sources permitted under the PSD regulations to the New Mexico Environmental Improvement Division (EID). The New Mexico EID will receive, conduct technical review, and process the PSD applications; however, since the New Mexico EID did not request full delegation of authority, EPA Region 6 will have dual responsibility to issue or deny PSD permits since permits shall be cosigned by the State and EPA for final issuance.

EFFECTIVE DATE: February 16, 1982.

ADDRESS: Copies of the State request and State-EPA agreement for delegation of authority are available for public inspection at the Air Branch, Environmental Protection Agency, Region 6, First International Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Willliam H. Taylor, Air Branch, Environmental Protection Agency, Region 6, First International Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270; (214) 767–1594 or (FTS) 729–1594.

SUPPLEMENTARY INFORMATION: On December 20, 1980, the New Mexico Environmental Improvement Division submitted to the EPA Region 6 office a request for EPA to delegate to them the responsibility for technical and administrative review authority of sources regulated under the EPA PSD program. The State has also agreed to accept the additional PSD responsibilities for source inspections and review of compliance test reports under the PSD regulations. After a thorough review of their request and information submitted, the Regional Administrator determined that the State's procedures for these portions of the PSD program are adequate and effective. Thus, on February 16, 1982, and pursuant to 40 CFR 52.21 (1980), the Regional Administrator delegated the authority for technical and administrative review of the Federal PSD program, the authority for source inspections for compliance under 52.21, and the authority for review of all compliance test reports to the State of New Mexico. The conditions of the delegation are delineated in the Regional Administrator's letter to the State dated February 16, 1982.

Effective immediately, all applications and other information pursuant to 40 CFR 52.21 by sources locating in the State of New Mexico should be submitted to the State agency at the following address: New Mexico Environmental Improvement Division, Air Quality Bureau, P.O. Box 968, Crown Building, Santa Fe, New Mexico 87503.

(Secs. 101 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601))

Dated: March 4, 1982.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 82-7021 Filed 3-15-82; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 5, 1982. Comments should inlcude facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T–3705–2.

Filing Party: William E. Emick, Jr., Offices of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T–3705–2, between the City of Long Beach and Cooper Stevedoring, Co., Inc., modifies the basic agreement between the parties which provides for the nonexclusive preferential assignment of certain premises located at Berths 9, 10 and 201 at Pier A in the Port of Long Beach. The purpose of the modification is to adjust the boundaries of the premises to accommodate construction and port development in the areas.

Agreement No.: T–3813–2.

Filing Party: Ryokichi Higashionna, Ph. D., Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Summary: Agreement No. T–3813–2, between the State of Hawaii and Matson Terminals, Inc., amends approved Agreement No. T–3813 which provided for the lease of land and facilities by Matson, at Sand Island, Honolulu, Hawaii, and for the financing of the construction of a new Special Terminal at the island. Amendment No. T–3813–2 amends the basic agreement by providing that monies in the Construction Fund may be used for the payment of interest on the notes to and including the completion date of the construction.

Agreement No.: T–4029.

Filing Party: Mr. Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, Post Office Box 2405, Savannah, Georgia 31402.

Summary: Agreement No. T–4029, between the Georgia Ports Authority (Port) and Mid-South Feeds, Inc. (Mid-South), provides for (1) the lease by Port to Mid-South of 1600 square feet of land adjacent to Transit Shed A in the Port of Brunswick, Georgia, and (2) preferential volume incentive rates for the use of Port's grain handling facilities. Mid-South agrees to handle no less than 75,000 tons of cargo through Port's Brunswick Terminal during the first year of the agreement, and no less than 100,000 tons of cargo for each year thereafter. The term of the agreement is for three years, with one three-year renewal option.

Agreement No.: T–4030.

Filing Party: Randall V. Adams, Accounting/Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T–4030 is a terminal lease agreement between the Port of Palm Beach (Port) and the First National Bank in Palm Beach (lessee) which provides that the Port will lease to lessee office space in the Port's (soon to be completed) Maritime Office Building. Lessee will use the premises as offices in which to conduct banking services. Lessee will pay the Port an annual base rental of ten thousand, two hundred eighty-five dollars ($10,285.00). The term of the lease is five (5) years with renewal options.

Agreement No.: T–4031.

Filing Party: Randall V. Adams, Accounting/Traffic, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T–4031 is a terminal lease agreement between the Port of Palm Beach (Port) and Zenga and Blank, P.A. (lessee) which provides that the Port will lease to lessee office space in the Port's (soon to be completed)

Maritime Office Building. Lessee will use the premises as offices in which to conduct their law practice. Lessee will pay the Port an annual base rental of eleven thousand, two hundred seventy-five dollars ($11,275.00). The term of the lease is five (5) years with renewal options.

Agreement No.: 10439.

Filing Party: Ms. Cindra G.. Sargeant, Hub Shipping Company, Inc., Box 232, Cohasset, Massachusetts 02025.

Summary: Agreement No. 10439 is a cooperative working agreement between Hub Shipping Company, Inc. (Hub) and W. G. Carroll & Co., Inc. (Carroll), and provides that Hub, acting in its capacity as a cargo broker, will secure ocean transportation arrangements for shippers exporting granite. Carroll (FMC Forwarder, License No. 90) will act as the freight forwarder for such shippers of granite. Hub and Carroll are to exchange the necessary technical information with each other to effect such shipment. As compensation, Hub will pay Carroll a commission of 1.25 percent over the base ocean freight for each shipment Carroll dispatches under this agreement. The term of the agreement is a minimum of one year and continues thereafter until cancelled.

Dated March 10, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-7066 Filed 3-15-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Air Marine International Cargo Services, Inc. d.b.a. M.A.C. Cargo Services, 9260 N.W. 12th St., Miami, FL 33172
Officers: Carlos del Corral, President/Director; Lourdes Goldman, Vice President

M. E. Dey Export, Inc., 759 North Milwaukee Street, Milwaukee, WI 53202
Officers: R. W. Gardenier, President; James Eiers, Vice President; Norman Little, Vice President

SCAC Texas, Inc., 15734 Lee Road, Houston, TX 77025
Officers: Paul Lanoe, President/Director; Gerard Lemasson, Vice President/Director; Bernard Martineau, Vice President/Director; Richard Bernstein, Secretary; Manfred Lorenzen, Executive Vice President; Jean-Claude Mouton, Director/Secretary/Treasurer

Branko Forwarding Corp., c/o Lardi & Rosenberg, Esqs., 10 Cutter Mill Road, Great Neck, NY 11021
Officers: Branko Solaric, President/Director; Florence Solaric, Secretary/Director

Pizarro Forwarders, Inc., 3195 S.W. Third Avenue (Coral Way), Suite 2, Miami, FL 33129
Officer: Jimmy Pizarro, Sole Officer

International Export Packers, Inc., 4600 Eisenhower Avenue, Alexandria, VA 22304
Officers: David W. McCreight, Executive Vice President; Mary M. Martin, Secretary; Dora A. Hawkins, Treasurer; Jack Kagan, President

Dated: March 10, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-7007 Filed 3-15-82; 8:45 am]

BILLING CODE 6730-01-M

Sea-Land Service, Inc. and Port of Houston Authority Terminal Lease Agreement; Cancellation

Filing party: F. William Colburn, Director of Administration, Port of Houston Authority, P.O. Box 2562, Houston, Texas 77001.

Agreement No. T-3701.

Summary: On February 22, 1982, the Commission received notice of the termination of Agreement No. T-3701 by the signatory parties thereto, Sea-Land Service, Inc. and the Port of Houston Authority. The agreement will be cancelled effective January 31, 1982, the date specified by the parties.

Dated: March 10, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-7006 Filed 3-15-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82G-0018]

Olin Chemicals; Withdrawal of Petition for GRAS Affirmation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of the petition (GRASP 3G0019) proposing affirmation that calcium hypochlorite for use in sanitizing barley is generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: John Dawson, 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. 1785-1786 (21 U.S.C. 348(b))), the following notice is issued: In accordance with § 171.7 *Withdrawal of petition without prejudice* (21 CFR 171.7) of the procedural food additive regulations, Olin Chemicals, 120 Long Ridge Rd., Stamford, CT 06904, has withdrawn its petition (GRASP 3G0019), notice of which was published in the **Federal Register** of March 23, 1973 (38 FR 7578) proposing that calcium hypochlorite for use in sanitizing barley is generally recognized as safe (GRAS).

Dated: March 5, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-6844 Filed 3-15-82; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

White House Conference on the Aging; Notice of Annual Report on File

Notice of Annual Report on File

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 95-463, 5 U.S.C. App. 1, Sec. 10, 1976) that the annual report for the White House Conference on the Aging has been prepared and is on file at the Department's Library and the Library of Congress's Exchange & Gift Division.

Further information on the Committee may be obtained form Ms. Jo Harris, White House Conference on the Aging, Room 4513, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245-1904.

Dated: March 8, 1982.

Mamie Welborne,

Human Development Services, Committee Management Officer.

[FR Doc. 82-7018 Filed 3-15-82; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Toxicology Program

The National Academy of Sciences-National Research Council (NAS–NRC) is conducting a study for the National Toxicology Program (NTP) to determine, in part, an estimate of what percentage of chemicals to which man and his environment may be exposed and thereby have the potential for public health implications, may be of interest. This contract also calls for the enumeration of those data characteristics to be used in these evaluations.

The NAS–NRC initial report, "Strategies to Determine Needs and Priorities for Toxicity Testing, Volume 1, Design," may be obtained from the National Academy Press, Publications Office, 2101 Constitution Ave., NW., Washington, D.C. 20418, for the sum of $11.39 per copy.

This report outlines the procedure and then executes it to obtain a *random* sample of 100 chemicals selected from a larger population of pesticides, cosmetics, drugs, food additives and other chemicals in commerce. For each of these 100 *randomly*-selected chemicals there is some toxicity information available. An in-depth assessment of the quality of these individual data bases will be conducted. While the NAS–NCR has undertaken the search of conventional data bases, the NTP is reenforcing this search by seeking via this **Federal Register** announcement any available data on the physicochemical characteristics, manufacturing process, production volume, use chemical fate exposure and toxicity of any of the 100 chemicals in the random sample. Of these 100 chemicals, 85 of them are listed in the NAS–NRC report; 15 were subsequently added. The 100 chemicals are listed below in order of ascending CAS Registry No.:

Chemical	CAS registry No.
Norethindrone acetate	51-98-9
Spironolactone	52-01-7
(2,2,2-Trichloro-1-hydroxethyl) dimethyl 1 phosphonate	52-68-6
Pryidoxine hydrochloride	58-56-0
Calcium acetate	62-54-4
Lactose	63-42-3
Tetrasodium EDTA	64-02-8
Citric acid, trisodium salt	68-04-2
DM Hydantoin	77-71-4
Propanal, 2-methyl-	78-84-2
4,4'-isopropylidenediphenol	80-05-7
1,4-dihydroxy-9,10-anthraquinone	81-64-1
Phytonadione	84-80-0
Bicyclo[7.2.0]undec-4-ene, 4,11,11-trimethyl-8-methylene-, 1R (1R*,4E,9S*)]	87-44-5
Isoquinoline, 1,2,3,4-tetrahydro-	91-21-4
Ethylene thiourea	96-45-7
Dichlorophen	97-23-4
Benzenesulfinic acid, 4-chloro-	100-03-8
Ferrocene	102-54-5
2,5-Cyclohexadiene-1,4-dione, dioxime	105-113
p-Cresol	106-44-5
p-Benzoquinone	106-51-4
Acetaldehyde, chloro-	107-20-0
Maleic acid	110-16-7
Nitrous acid, 3-methylbutyl ester	110-46-3
Cobalt chloride, compound with pyridine	110-86-1
2,6,10,14,18,22-Tetracosahexane, 2,6,10,15,19,23-hexamethyl-, (a11-E)-	111-02-4
Diethylene glycol	111-46-6
Di(2-methoxyethyl) phthalate	117-82-8
1-Monostearin	123-94-4
Sodium acetate	127-09-03
1-Penten-3-one, 1-(2,6,6-trimethyl-2-cyclo-hexen-1-yl)-	127-42-4
Trisodium EDTA	150-38-9
Sodium lauryl sulfate	151-21-3
Acenaphthylene	208-96-8
Norharman	244-63-3
Phosphorothioic acid, O,O-diethyl O-pyrazinl ester	297-97-2
Methamphetamine hydrochloride	300-42-5
Butanedioic acid, tetrafluoro-	377-38-8
Ethane, (2,2,2-trifluoroethoxy)-	406-90-6
Dehydroacetic acid	520-45-6
Benzene, 1,2,3,5-tetramethyl-	527-53-7
2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-	533-74-4
Guanidine carbonate	593-85-1
Lithium, (1-methylpropyl)-	598-30-1
9H-Fluorene, 2-nitro-	607-57-8
Acetylcysteine	616-91-1
Benzenesulfonamide, N,4-dimethyl-	640-61-9
Amantadine hydrochloride	665-66-7
Phosphorodithioic acid, O,O-dimethyl ester, S-ester with N-(mercaptomethyl)phthalimide	732-11-6
Benzene, 1,1'-oxybis-2,3,4,5,6-pentabromo	1163-19-5
Ethyl linolenate	1191-41-9
C.I. Pigment Green 7	1328-53-6
Calcium stearate	1592-23-0
Benzoic acid, 2-hydroxy-5-[(4-nitrophnyl)azo]-monosodium salt	1718-34-9
4,4'-Bipyridinium, 1,1'-dimethyl-, dichloride	1910-42-5
1-Propanaminium, N,N,N-tripropyl-, bromide	1941-30-6
Ethanol, 2-[[2-[(2-aminoethyl)amino]ethyl]amino]	1965-29-3
Carbamic acid, (4-chlorophenyl)-, 1-methylethyl ester	2239-92-1
2,8,9,-Trioxa-5-aza-1-silabicyclo[3.3.3]undecane, 1-methyl-	2288-13-3
1,2,4-Thiadiazole, 5-ethoxy-3-(trichloromethyl)-	2593-15-9
Cyclohexane, 1-ethenyl-	2622-21-1
1,3-Propanediol, 2-methyl-2-[(nitrooxy)methyl]-, dinitrate ester	3032-55-1
Diphenidol hydrochloride	3254-89-5
Carbonic acid, nickel (2+) salt (1:1)	3333-67-3
Stannane, difluorodimethyl-	3582-17-0
Pentanamide, N,N-dimethyl-	6225-06-5
Phenol, 4-(di-2-propenylamino)-3,5,-dimethyl-, methylcarbamate (ester)	6392-46-7
Methylergonovine maleate	7054-07-1
Germanium	7440-56-4
Acetic acid, chloro-, 2-phenylethyl ester	7476-91-7
Silica	7631-86-9
Potassium iodate	7758-05-6
Cupric sulfate, anhydrous	7758-98-7
Sodium bromate	7789-38-0
Hydrazine hydrate	7803-57-8
Linseed oil	8001-26-1
Cottonseed oil	8001-29-4
Alkyldimethylbenzylammonium choloride	8001-54-5
Peanut oil	8002-03-7
Ichthammol	8029-68-3
Jasmine absolute	8031-01-4
Oleth-15	9004-98-2
PEG-100 stearate	9004-99-3
Carboxypolymethylene	9007-20-9
Silane, dichloroethenylethyl-	10138-21-3
2-Furanmethanol, tetrahydro-, phosphate (3:1)	10427-00-6
Vanadic acid, ammonium salt	11115-67-6
Terbium oxide	12738-76-0
Sodium laureth-3 sulfate	13150-00-0
Zinc, bis(2,4-pentanedionato-O,O')- (T-4)-	14024-63-6
tert-Dodecanethiol	25103-58-6
PEG-200	25322-68-3
2-Propenoic acid, 2-methyl-, 2-hydroxypropyl ester, homopolymer	25703-79-1
FD&C Red No. 40	25956-17-6
2,3,5-Trichloro-4-(proylsulfonyl)pyridine	38827-35-9
Distillates (petroleum), solvent-dewaxed light paraffinic	64742-56-9
Zeolites, calcium-iron-magnesium-vanadium-containing	68918-02-5
Insulin suspension, isophane, purified pork	None
Riboflavin supplement	None

Information should be sent no later than close of business April 15, 1982, to: Dr. Scott Baker, National Academy of Sciences, (WG–1008), 2101 Constitution Ave., N.W., Washington, D.C. 20418.

Dated: March 9, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-6998 Filed 3-15-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Outer Continental Shelf; Dates and Locations of Public Hearings Regarding Environmental Impact Statement for Proposed Outer Continental Shelf (OCS) Oil and Gas Lease Sale No. 70

In accordance with 43 CFR 3314.1, public hearings will be held in order to receive comments and suggestions relating to the Draft Environmental Impact Statement prepared for a proposed Outer Continental Shelf oil and gas lease sale of 479 tracts of submerged Federal lands in the St. George Basin region of Alaska. The hearings will be held on the following dates at the locations and times indicated.

March 30, 1982

Cold Bay School, Meeting Room, Cold Bay, Alaska, 4:00–6:00 p.m., 7:00–10:00 p.m.

Telephone Tie-in to: False Pass, Nelson Lagoon, Sand Point, King Cove, 7:30–9:00 p.m.

March 31, 1982

Community Service Facility, Unalaska, Alaska, 6:00–10:00 p.m.

Telephone Tie-in to: Nikolski, Akutan, Atka, 7:30–9:00 p.m.

April 1, 1982

St. Paul Civic Center, St. Paul, Alaska, 7:00–10:00 p.m.

Telephone Tie-in to: St. George, 7:00–10:00 p.m.

April 2, 1982

Anchorage Historical and Fine Arts Museum, Anchorage, Alaska, 1:00–5:00 p.m., 7:00–10:00 p.m.

The hearings will provide the Secretary of the Interior with information from government agencies and the public which will help in the

evaluation of the potential effects of the proposed lease sale.

The Draft Environmental Impact Statement concerning proposed OCS Lease Sale No. 70 was made available to the public on October 30, 1981. Copies of this statement can be obtained from the Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510, (907) 276–2955. Copies of the Draft Environmental Impact Statement are also available for review in public libraries throughout Alaska.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact Nancy Hendrix, Alaska Outer Continental Shelf Office, at the address and telephone number above by 4:00 p.m. (Alaska Daylight Time), Friday, March 26, 1982. Time limitations make it necessary to limit the length of oral presentations to ten (10) minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentations or by mail until April 9, 1982. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments. Written comments should be addressed to the Manager, Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510.

The Bureau of Land Management recognizes the distances involved and the travel difficulties faced by those in the more remote areas who may be affected by this proposal and may wish to participate in the public hearing process. Accordingly, telephone tie-ins to some of the public hearings have been arranged for the villages indicated in the hearing schedule above. All comments, whether provided at the formal public hearings, through telephone tie-in, or in writing, are given equal weight in preparation of the Final Environmental Impact Statement.

Robert F. Burford,

Director, Bureau of Land Management.

March 11, 1982.

[FR Doc. 82-7022 Filed 3-15-82; 8:45 am]

BILLING CODE 4310-84-M

District Grazing Advisory Board, Susanville, California; Meeting

Notice is hereby given in accordance with Pub. L. 94–579 (FLPMA) that a meeting of the Susanville District Grazing Advisory Board will be held on April 12, 1982.

The meeting will begin at 10:00 a.m. at the Cal Pines Lodge, Alturas, California.

The agenda for the meeting will include:

1. Continuation of Discussion on Allocation of Funds to the Districts.
2. Other Items as Appropriate.
3. Public Comments.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:30 p.m. and 4:30 p.m., or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1090, Susanville, California, 96130–1090, by April 2, 1982. Depending upon the number of persons wishing to make oral statements, a per person list limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

C. Rex Cleary,

District Manager.

[FR Doc. 82-7050 Filed 3-15-82; 8:45 am]

BILLING CODE 4310-84-M

Final Coal Management Decisions for Kemmerer Resource Area Rock Springs District, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final coal management decisions for Kemmerer Resource Area, Rock Springs District.

SUMMARY: The Rock Springs, Wyoming District Office of the Bureau of Land Management has reviewed the Pioneer Trails Management Framework Plan (MFP) and made final decisions for federal coal management in the Kemmerer Resource Area. The purpose for the review was to amend the MFP to assure that it reflects current statutory requirements and policies of section 522 of the Surface Mining Control and Reclamation Act of 1977 and the regulations contained in 43 CFR 3400. The decisions affect the Kemmerer Known Recoverable Coal Resource Area (KRCRA) which is located in Southwestern Wyoming in Lincoln and Uinta Counties.

Public participation opportunities were provided by **Federal Register** notice of November 9, 1981; an open house conducted in Kemmerer on November 24, 1981, to discuss proposed coal decisions; a public hearing on the evening of November 24 in Kemmerer; public review of the proposed decisions brochure of November 9, 1981; and informal public contacts in the process of reviewing the coal area. Public comments were carefully considered and the final coal decisions contained in the MFP amendment reflect those considerations.

Specific adjustments in the final decisions as a result of public comment include: one portion of a historic trail has been determined to be acceptable for coal development pending further study rather than unsuitable (two other historic trail segments remain unsuitable); all other cultural sites and sage grouse breeding/nesting areas that were unsuitable have been determined to be acceptable with specified stipulations and mitigation requirements; about 1500 acres were determined to be unsuitable due to big game critical winter habitat; floodplain areas were determined to be acceptable pending further study rather than unsuitable; and alluvial valley floor areas were determined to be acceptable pending final determinations by Wyoming State government at the time of mine permitting rather than unsuitable. In addition, surface owner consultations determined that about 0.2 million ton of federal coal unavailable for leasing in 1984; and the decisions now better accommodate potential producing oil/gas fields in the coal area.

A brochure summarizing these final coal decisions will be available about March 26, 1982 in the Rock Springs District Office and the Kemmerer Resource Area Office. Those who attended the public hearing or requested that their name be placed on the coal mailing list will be mailed a copy of the brochure. Since the protest period for this planning amendment will begin before the brochures will be available to the public limited copies of the printing material can be made available upon request. Such requests should be submitted to the BLM Rock Springs District Office or the Kemmerer Resource Area Office at the addresses and phone numbers listed below.

A 30-day protest period begins from the date of publication of this notice. During that time, any person who participated in the planning process and has an interest which may be adversely affected by the decisions may protest the approval of the planning amendment. In accordance with 43 CFR 1601.6–1(d), a protest may raise only those issues which were submitted for the record to the District Manager during the planning process. Protests must be submitted in accordance with 43 CFR 1601.6–1 (d) and (e).

DATES: The brochure will be available about March 26, 1982. The protest period

begins on the date of this notice and ends in 30 days.

ADDRESSES: (1) BLM, Rock Springs District Office, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82901 (307) 382–5350; (2) BLM, Kemmerer Resource Area, U.S. 30, Across from Port of Entry, P.O. Box 632, Kemmerer, Wyoming (307) 877–3933.

FOR FURTHER INFORMATION CONTACT: Steve Howard, Area Manager, at the above address or phone number for the Kemmerer Resource Area Office.

Jerry K. Ostrom,

Assistant District Manager.

[FR Doc. 82–7023 Filed 3–15–82; 8:45 am]

BILLING CODE 4310–84–M

Utah; Intensive Wilderness Inventory Decisions in Effect

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On February 10, 1982 the Interior Board of Land Appeals (IBLA) affirmed the Utah State Director's decision on four wilderness inventory units, (UT–050–233, UT–060–007, 011 & 012). The decisions as originally published in the September 20, 1979 and May 25, 1979 **Federal Register** notices (44 FR 54554, 44 FR 30450) are therefore final. In those decisions a 31,360 acre portion of UT–060–007 was designated as a Wilderness Study Area (WASA); the other portions of that unit were excluded from further wilderness review, along with units UT–050–233, UT–060–011 & 012. That portion of UT–060–007 designated as a WSA will remain under management restrictions iposed by section 603 of Pub. L. 94–579. The remainder of that unit and those excluded (UT–050–233, UT–060–011 & 012) from further wilderness review will no longer be subject to management restrictions imposed by section 603 of Pub. L. 94–579.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, Utah BLM Wilderness Coordinator (801) 524–5326.

Dated: March 4, 1982.

Ronald G. Robison, Jr.,

State Director.

[FR Doc. 82–7051 Filed 3–15–82; 8:45 am]

BILLING CODE 4310–84–M

[OR 1294 (Wash)]

Washington; Proposed Withdrawal and Reservation of Lands; Amendment; Correction

In FR Doc. 82–3699 appearing on page 6382, in the issue of Thursday, February 11, 1982, change the first line to read "(OR 1294 (WASH))" and the first word of the second line to read "Washington".

Dated: March 9, 1982.

Leland D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–7052 Filed 3–15–82; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

Correction

In FR Doc. 82–6085 appearing at page 9579 in the issue of Friday, March 5, 1982, make the following change:

On page 9579, middle column, the sentence, "The applicant requests a permit to export in foreign commerce 18 captive-born cotton-top marmosets (*Saguinus oedipus*) from New Haven, CT to the University of Bristol, Bristol, England, for enhancement of propagation.", should be inserted to appear immediately following, "Applicant: Yale University School of Medicine, New Haven, CT, PRT 2–8857" and before, "Applicant: New York Zoological Society, Bronx, NY, PRT 2–8859"

BILLING CODE 1505–01–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 5, 1982. Pursuant to § 60.13 of 36 CFR Part 60 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 March 31, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

CALIFORNIA

Alameda County

Oakland, *Madison Park Apartments*, 100 9th St.

Santa Clara County

Gilroy, *Christian Church of Gilroy*, 160 5th St.

Tulare County

Visalia, *Bank of Italy Building*, 128 E. Main St.

DELAWARE

Kent County

Magnolia, *Lawber, Matthew, House*, N. Main St. (moved)

New Castle County

Middletown vicinity, *Hanson, B. F., House*, W of Middletown

Odessa, *Old St. Paul's Methodist Episcopal Church*, High St.

DISTRICT OF COLUMBIA

Washington

Potomac *Palisades Site*, Off Foxhall Rd., and MacArther Blvd.

MASSACHUSETTS

Berkshire County

Adams, *Armory Block*, 39—45 Park St.
Adams, *Barrett, P. J., Block*, 70—76 Park St.
Adams, *Berkshire Mill No. 1*, Hoosac St.
Adams, *Jones Block*, 49—53 Park St.
Adams, *Mausert Block*, 19—27 Park St.
Adams, *Pittsfield and North Adams Passenger Station and Baggage and Express House*, 10 Pleasant St.
Adams, *Simmons Block*, 86—90 Park St.
Stockbridge, *Glendale Power House*, MA 183
Stockbridge vicinity, *Wheatleigh*, W. Hawthorne Rd.

Essex County

Lawrence, *American Woolen Mill Housing Distict*, 300—328 Market St.
Peabody, *Felton, Nathaniel, Houses*, 43 Felton St. (Jr.) and 47 Felton St. (Sr.)

Hampden County

Westfield, *Octagon House*, 28 King St.

Middlesex County

Melrose, *Melrose Town Center Historic District*, Main St.

Norfolk County

Milton, *Belcher-Rowe House*, 26 Governor Belcher Lane
Needham, *Lewis, Joshua, House*, 178 South St.
Needham, *Mills, Davis, House*, 945 Central Ave.
Needham, *Townsend House*, 980 Central Ave.
Weymouth, *Old South Union Church*, 25 Columbian St.

Worcester County

Webster, *Main Street Historic District*, 175—299 and 228—274 Main St.

MINNESOTA

BENTON COUNTY MULTIPLE RESOURCE AREA. This area includes: Gilman, *Saints Peter and Paul Catholic Church Complex*, State St.; Gilman vicinity, *Esselman Brothers General Store*, NW of Gilman; Ronneby vicinity, *Ronneby Charcoal Kiln*, W of Ronneby; Royalton vicinity, *Posch Site*, S of Royalton (previously listed in the National Register 10–2–73); St. Cloud, *Ice Service Company Building*, 3rd Ave. (submitted as individual nomination December 1981); St. Cloud vicinity, *Cota Round Barns*, SR 48; and Sauk Rapids, *Robinson, Leonard, House*, 202 2nd Ave. S

Houston County

HOUSTON COUNTY MULTIPLE RESOURCE AREA. This area includes: Brownsville, *Emanuel Evangelical Lutheran Church,* Main St.; (previously listed in the National Register 6–2–1970); Caledonia, *Houston County Courthouse, Jail, and Municipal Garage,* Courthouse Sq.; *Sprague, Ellsworth Ara and Robert David, Houses,* 204 and 224 W. Main St.; *Williams, Spafford, Hotel (Barnes House)* E. Main St.; Caledonia vicinity, *Houston County Poor Home,* SR 12; Eitzen, *Bunge, Christian Jr., Store,* Iowa Ave.; Eitzen vicinity, *Eitzen Stone Barn,* S of Eitzen; *Johnson, Charles, Flour Mill (Upper Mill)* NE of Eitzen; *Portland Prairie Methodist Episcopal Church,* Off MN 76; LaCrescent, *Cameron, Daniel, House,* 429–435 S. 7th St. and Sheldon vicinity, *Schech's Mill,* Beaver Creek Valley State Park (previously listed 1–31–78)

Rice County

RICE COUNTY MULTIPLE RESOURCE AREA. This area includes: Faribault, *Faribault Historic Commercial District,* Central Ave. between 2nd and 3rd Sts.; *Shattuck Historic District,* Off MN 299; Northfield, *Northfield Historic District,* Roughly bounded by Water, Division, 3rd and 5th Sts. (previously listed in the National Register 6–11–79); Dundas, *Archibald-Dundas Mill Site* (previously listed in the National Register 10–8–76); *Archibald, E. T., House,* Off MN 218 (previously listed in the National Register 6–17–76); *Ault Store,* 2nd St.; *Church of the Holy Cross,* 2nd St.; *Martin House,* Bridge and 1st St.; Faribault, *Buck, Cassius, House,* 124 1st Ave., SW.; *Buckham, Thomas Scott, Memorial Library,* Central Ave. and Division St.; *Cathedral of Our Merciful Saviour,* 515 NW. 2nd Ave. (previously listed in the National Register 8–10–79); *Cathedral of Our Merciful Saviour and Guild House,* 515 NW. 2nd Ave. (boundary increase approved 2–19–82); *Chapel of the Good Shepherd,* Shattuck School (previously listed in the National Register 4–4–75); *Congregational Church of Faribault,* 227 NW. 3rd St. (previously listed in the National Register 5–12–77); *Faribault, Alexander, House,* 12 NE. 1st Ave. (previously listed in the National Register 9–22–70); *Faribault City Hall,* 208 1st Ave., NW.; *Faribault Water Works,* 7th St., NW.; *Farmer Seed and Nursery Company,* 818 NW. 4th St.; *Hospital,* Faribault State Hospital; *Hutchinson, John, House,* 305 2nd St., NW.; *Seabury Divinity School (Johnston Hall)* District No. 1 Hospital (previously listed in the National Register 3–31–75); *Noyes Hall,* Minnesota School for the Deaf campus (previously listed in the National Register 5–12–75); *Old Phelps Library,* Shattuck School (previously listed in the National Register 4–4–75); *Rice County Courthouse and Jail,* 3rd St. and 2nd Ave., NW.; *Rock Island Depot,* Off MN 60; *St. Mary's Hall,* Off MN 299; *Shumway Hall and Morgan Refectory,* Shattuck School (previously listed in the National Register 4–4–75); *Theopold Mercantile Company Wholsale Grocery Building,* 1st Ave. and 3rd St., NE.; *Wilson, Hudson, House,* 104 1st Ave., NW.; Lonsdale, *Lonsdale Public School,* 3rd Ave., SW. (previously listed in the National Register 8–30–79); Nerstrand, *Nerstrand City Hall,* Main St.; *Osmundson, Osmund, House,* Off MN 246; Nerstrand vicinity, *Bonde Farmhouse,* SR 27 and MN 246; *Valley Grove,* SR 29 and MN 246; *Veblen, Thomas, Farmstead,* NE of Nerstrand off MN 246 (previously listed in the National Register 6–30–75); Northfield, *All Saints Church,* Washington and 5th Sts.; *Baker, Laura, School,* 211 Oak St. (previously listed in the National Register 3–29–78); *Goodsell Observatory (New Observatory)* Carleton College campus (previously listed in the National Register 5–12–75); *Lord, Drew H., House,* 201 E. 3rd St.; *Nutting House,* 217 Union St.; *Old Main-St. Olaf College,* St. Olaf College campus (previously listed in the National Register 6–3–76); *Rolvaag, O.E., House,* 311 Manitou St. (previously listed in the National Register 8–4–69); *Scoville Memorial Library,* 1st St. E. and College St.; *Scriver Block Building,* Bridge Sq. and Division St. (previously listed in the National Register 5–5–78); *Skinner Memorial Chapel,* 1st St.; *Steensland Library,* St. Olaf College campus; *Willis Hall (New Hall)* Carleton College campus (previously listed in the National Register 6–13–75); Northfield vicinity, *Drake Farmhouse,* SR 22 and 1; Shieldsville, *St. Patrick's Catholic Church and Parsonage,* SR 10; Webster vicinity, *Annuniciation Church of Hazelwood,* SR 46

Roseau County

Warroad, *Warroad Canadian National Railway Depot,* Main St.

NEW MEXICO

Bernalillo County

Albuquerque, *Employees' New Dormitory and Club,* Albuquerque Indian School campus

Albuquerque, *Gymnasium-Auditorium Building,* 1000 Menaul Blvd., NW.

Albuquerque, *Sewing, Home Economics and Laundry Building,* Albuquerque Indian School campus

Albuquerque, *University of New Mexico Lodge, Building 219,* Albuquerque Indian School campus

NEW YORK

Kings County

Brooklyn, *83rd Precinct Police Station and Stable,* 179 Wilson Ave.

OHIO

CIVIL WAR ERA SANDSTONE HOUSES IN LORAIN COUNTY THEMATIC RESOURCES. Reference—see individual listings under Lorain County.

Allen County

Delphos, *Marks Family House,* 233 N. Franklin St.

Belmont County

Belmont, *Schooley, Dr. Lindley, House and Office,* Main St.

Clark County

Springfield vicinity, *Donnel, Jonathan, House,* Lower Valley Pike

South Charleston vicinity, *Green Plain Monthly Meetinghouse,* S. Charleston-Clifton Rd.

Clermont County

Williamsburg vicinity, *McKever, Lewis, Farmhouse,* 4475 McKeever Rd.

Clinton County

Sabina, *Haines, Frank, House,* 149 W. Elm St.

Coshocton County

Plainfield, *Johnson, Thomas, House,* OH 541

Cuyahoga County

Cleveland, *Variety Store Building and Theatre,* 11801–11825 Lorain Ave.

Darke County

New Madison vicinity, *Walker, Christopher C., House and Farm,* 1 mi. SW of Madison on OH 121

Franklin County

Columbus, *Jefferson Avenue Historic District,* Roughly bounded by I–71, E. Broad, 11th St., and Long Sts.

Columbus, *North Market Historic District,* Roughly bounded by W. Goodale, Park, High, Front and Vine Sts.

Greene County

Yellow Springs, *Yellow Springs Historic District,* Roughly bounded by RR tracks, Yellow Springs-Fairfield Rd., High and Herman Sts.

Hamilton County

Cincinnati, *Bramble, Ayres L., House,* 4416 Homer Ave.

Cincinnati, *St. Rosa Church,* 2501 Eastern Ave.

Loveland, *Shield's Edwin M., House (William Johnston House)* 220 Riverside Ave.

Highland County

Hillsboro vicinity, *Trop Farm,* 6250 Mad River Rd.

Holmes County

Lakeville vicinity, *DeYarmon, Joseph L., House,* SR 179 and SR 273

Lorain County

Amherst, *Nichols, James, House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* N. Ridge Rd.

Amherst, *Quigley, G. W., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Milan Ave. and Lake St.

Amherst, *Streator, E. P., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Milan Ave. and Lake St.

Amherst vicinity, *Bryant, Nathaniel, House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Pyle-S. Amherst Rd.

Amherst vicinity, *Perry, Bushrod, House Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Middle Ridge Rd. and

Avon, *Hurst, William E., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* 33065 Detroit Ave.

(previously listed in the National Register 9–11–74)
Avon, *Jelling, J., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Detroit Rd.
Avon, *Lewis House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Avon-Belden Rd.
Avon, *Nagel House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Nagel and Schwartz Rds.
Avon, *Robinson-Fitch House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* SR 83
Avon, *Wilson, Ebenezer, House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Kinzel Rd. and SR 83
Avon Lake, *Satter, Michael, House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Walker and Jaycox Rds.
Elyria vicinity, *Webster, William, House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Indian Hollow Rd.
Lorain, *St. Ladislaus Roman Catholic Church,* 2908 Wood Ave.
Oberlin, *Stone House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* N. Park St.
Oberlin vicinity, *Banks, J., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Parsons Rd.
Oberlin vicinity, *Blakeslee House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Grafton Rd.
South Amherst vicinity, *Jenne House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Oberlin Rd.
Vermilion vicinity, *Cable, O. A., House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* Middle Ridge and Baumhart Rds.
Vermilion vicinity, *Morse-Zunt House (Civil War Era Sandstone Houses in Lorain County Thematic Resources)* St. and N. Ridge Rd.

Montgomery County

Dayton, *Huffman Historic District,* Roughly bounded by E. 3rd, Hamilton, VanLear and Beckel Sts.

Pickaway County

Circleville vicinity, *Redlands,* 1960 N. Court St.

Richland County

Butler vicinity, *Rummell Mill,* NE of Butler on SR 349
Mansfield vicinity, *Lewis, Samuel, House,* 291 N. Stewart Rd.
Perrysville vicinity, *Shambaugh, George, House,* Frontz Rd.
Shelby, *Shelby Center Historic District,* E. and W. Main St.

Van Wert County

Delphos, *Bredeick-Lang House,* 508 W. 2nd St.

TENNESSEE

NINETEENTH CENTURY CHURCHES IN CLARKSVILLE THEMATIC RESOURCES. Reference—see individual listings under Montgomery County.

Knox County

Knoxville, *Burwell Building-Tennessee Theater (Knoxville Banking and Trust Company Building)* 600 S. Gay St.

Montgomery County

Clarksville, *Catholic Church and Rectory (Nineteenth Century Churches in Clarksville Thematic Resources)* 716 Franklin St.
Clarksville, *Clarksville Methodist Church (Nineteenth Century Churches in Clarksville Thematic Resources)* 334 Main St.
Clarksville, *First Presbyterian Church (Nineteenth Century Churches in Clarksville Thematic Resources)* 213 Main St. (previously listed in he National Register 4–30–76)
Clarksville, *Madison Street Methodist Church (Nineteenth Century Churches in Clarksville Thematic Resources)* 319 Madison St. (previously listed in the National Register 5–13–76
Clarksville, *St. Peter African Methodist Church (Nineteenth Century Churches in Clarksville Thematic Resources)* 518 Franklin St.
Clarksville, *Trinity Church and Rectory (Nineteenth Century Churches in Clarksville Thematic Resources)* 317 Franklin St.

WISCONSIN

Walworth County

Delavan vicinity, *Mile Long Site (47 WL–110)* (boundary decrease)

WEST VIRGINIA

Brooke County

Bethany, *Bethany Historic District,* WV 67
Wellsburg, *Wellsburg Historic District,* WV2

[FR Doc. 82-7033 Filed 3-15-82; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

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 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 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 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.

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. OP3–041

Decided: March 8, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 15735 (Sub-40), filed February 25, 1982. Applicant: ALLIED VAN LINES,

INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI), under continuing contract(s) with the Bendix Corporation, of Southfield, MI.

MC 16334 (Sub-15), filed February 26, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888–3386. Transporting *insulating materials and related products*, between points in Franklin County, KS, Hennepin County, MN, and Adams County, CO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 67234 (Sub-49), filed February 26, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with The Bendix Corporation, and its subsidiaries, of Southfield, MI.

MC 69224 (Sub-56), filed February 26, 1982. Applicant: H & W MOTOR EXPRESS COMPANY, 3000 Elm Street, Dubuque, IA 52001. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603, (319) 583–7391. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in IA, IL, IN, MN, MO, WI, Lancaster, Douglas, Sarpy, Saunders, Washington, Dodge and Cass Counties, NE, and Douglas, Jefferson, Wyandotte, Johnson, Leavenworth and Shawnee Counties, KS.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 109634 (Sub-12), filed February 25, 1982. Applicant: TRAILER CONVOYS, INC., 1248 Highway 31, Jeffersonville, IN 47130. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Wal-Mart Stores, Inc., of Bentonville, AR.

MC 117184 (Sub-11), filed February 23, 1982. Applicant: APEX TRUCKING CO., INC., 120 Seaview Dr., Secaucus, NJ 07094. Representative: Edward L. Nehez, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with International Business Machines Corporation, of Armonk, NY.

MC 125535 (Sub-37), filed February 26, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Road, St. Louis, MO 63141. Representative: (same as above), (314) 569–1161. Transporting *metal products* (except commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Jackson Iron and Metal, Inc., of Jackson, MS.

MC 140174 (Sub-9), filed February 26, 1982. Applicant: BROOKS TRUCKING, INC., E. North St., P.O. Box 187, Vanlue, OH 45890. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *general commodities* (except classes A and B explosives and household goods), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141084 (Sub-23), filed February 26, 1982. Applicant: NATIONAL FREIGHT LINES, INC., 13023 Arroyo St., P.O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner (same address as applicant), (213) 361–8647. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with SCS Industries, Inc., of Sylmar, CA.

MC 142504 (Sub-2), filed February 22, 1982. Applicant: JACK T. MOOREHEAD, d.b.a. JACK MOOREHEAD TRUCKING, Niagara Road , Plesant Valley, NY 12569. Representative: Neil D. Breslin, 11 North Pearl Street, Albany, NY 12207. Transporting *lumber and building material*, between points in NC and SC, on the one hand, and, on the other, points in CT, NY and PA.

MC 144265 (Sub-2), filed February 22, 1982. Applicant: A.I.D., INC., Air Freight Terminal Building, "D" Street, Ryan Airport (P.O. Box 53154), Baton Rouge, LA 70805. Representative: Glyn J. Godwin, 3133 Perkins Road, Baton Rouge, LA 70808, (504) 383–0040. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Baton Rouge, LA, and points within 75 miles thereof, on the one hand, and, on the other, points in TX, AL, FL, GA, MS, AR and TN.

MC 145384 (Sub-60), filed March 1, 1982. Applicant: ROSE-WAY, INC., P.O. Box 4644, Des Moines, IA 50306. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *metal products*, between Los Angeles, CA, on the one hand, and, on the other, points in AZ, IA, IL, IN, KY, MO, NM, OH, OK, and TX.

MC 145704 (Sub-4), filed February 22, 1982. Applicant: G. P. BOURROUS TRUCKING COMPANY, INC., 508 Burke St., Diboll, TX 75941. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768–2207, (512) 476–6391. Transporting *lumber and wood products*, between points in Polk and Angelina Counties, TX, on the one hand, and, on the other, points in TX and LA.

MC 146974 (Sub-11), filed February 26, 1982. Applicant: WILLIAM V. THOMAS, 9700 Second St., N.W., Albuquerque, NM 87114. Representative: John P. Jennings (same address as applicant), (505) 897–3560. Transporting (1) *lumber and wood products*, (2) *clay, concrete, glass or stone products*, (3) *metal products*, (4) *machinery*, (5) *transportation equipment*, (6) *building materials, and* (7) *Mercer commodities*, between points in the U.S. in and west of PA, MD, VA, NC, SC, GA, and FL (including AK).

MC 152544 (Sub-13), filed February 24, 1982. Applicant: CYPRESS TRUCK LINES, INC., 1746 E. Adams St., Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting *building and construction materials*, between points in York County, PA, Tarrant County, TX, Solano County, CA and Kane County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152744 (Sub-4), filed February 24, 1982. Applicant: CITADEL TRANSPORT, INC., 180 N. Michigan Ave., Chicago, IL 60601. Representative: Thomas M. O'Brien, 10 S. LaSalle St., Chicago, IL 60603, (312) 263–1600. Transporting *such commodities* as are dealt in or used by processors and distributors of food and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with the Campbell Soup Company of Camden, NJ.

MC 154624 (Sub-1), filed February 23, 1982. Applicant: ACE LIQUID WASTE HAULERS, INC., 3715 Beechmont Court, Cincinnati, OH 45226. Representative: Robert G. Nichols (same address as applicant), (513) 871–8397. Transporting *toxic and hazardous wastes*, between points in OH, MI, IN, IL, WI, KY, TN, WV, VA, PA, TX, AL, GA, and NY, on

the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The certificate in this proceeding to the extent it authorizes the transportation of hazardous wastes shall expire 5 years from the date of issuance.

MC 156345, filed February 25, 1982. Applicant: ELK EXPRESS LINES, LTD., 5542 Angling Rd., Portage, MI 49002. Representative: Ms. Vicki J. Elkins (same address as applicant), (616) 343–1450. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, IA, KY, MD, MI, MN, MO, NY, OH, PA, TN, WV, and WI.

MC 159775, filed February 26, 1982. Applicant: DODSON TRUCKING, INC., 219 A Superior, Evanston, WY 82930. Representative: James E. Phillips, 822 Main St., Evanston, WY 82930, (307) 789–9370. Transporting *oilfield equipment and supplies,* between Evanston, WY, on the one hand, and, on the other, points in CO, UT, NV, MT, and ID.

MC 160154, filed February 26, 1982. Applicant: DOUGLAS NORD, 1401 Texas Ave., St. Louis Park, MN 55426. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *lumber and wood products,* between points in Sonoma, Humboldt, and Mendocino Counties, CA, on the one hand, and, on the other, points in IA, MN, ND, SD, and WI.

MC 160425, filed February 24, 1982. Applicant: BETTY JENSEN d.b.a. HUSKY HAULERS, P.O. Box 60488, Fairbanks, AK 99706. Representative: Everett L. Jensen (same address as applicant), (907) 456–3758. Transporting *general commodities* (except classes A and B explosives, household goods and hazardous waste materials), between points in the U.S. (except HI).

MC 160725, filed February 24, 1982. Applicant: A. & S. TRUCKING COMPANY, INC., 404 Cross St., Cleveland, MS 38732. Representative: Ajax J. Morris, Jr., P.O. Box 782, Cleveland, MS 38732, (601) 843–2555. Transporting *iron and steel articles,* between points in the U.S. (except AK and HI).

MC 160764, filed February 25, 1982. Applicant: HAROLD WINDSOR AND TEDDIE WRIGHT, d.b.a. FLYING "W", 18435 2nd Ave., S., Seattle, WA 98148. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting (1) *machinery,* (2) *those commodities* which because of their size or weight require the use of special handling or equipment, and (3) *lumber,* between points in the U.S. (except AK and HI).

MC 160765, filed February 25, 1982. Applicant: STEWARD TOURS, 3923 Avera Ave., Winston-Salem, NC 27106. Representative: Polly Stewart (same address as applicant), (919) 924–2802. As a *broker,* at Winston-Salem, NC, in arranging for the transportation of *passengers and their baggage,* between points in NC, on the one hand, and, on the other, points in the U.S.

MC 160775, filed February 26, 1982. Applicant: HILKE E. GRANT AND MARCEL TROTTIER, d.b.a. T.L.C. TOURS, 4734 Topanga Canyon Blvd., Woodland Hills, CA 91364. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *passengers and their baggage* in the same vehicle with passengers, in round-trip charter operations, beginning and ending at points in Los Angeles County, CA, and extending to points in NV, AZ, UT, and WA, under continuing contract(s) with Golden Tours for Senior Citizens Corporation, of Alhambra, CA.

Vol. No. OP4–89

Decided: March 10, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 129537 (Sub-67), filed February 26, 1982. Applicant: REEVES TRANSPORTATION CO., Rt. 5, Dew's Pond Rd., Calhoun, GA 30701. Representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, FL 33602, (813) 229–6165. Transporting (1) *paper and paper products,* (2) *plastic and plastic products,* and (3) *chemicals,* between points in the U.S. (except AK and HI).

MC 136816 (Sub-15), filed March 1, 1982. Applicant: THE UNIVERSE COMPANY, INC., 3523 L St., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397–7033. Transporting *food and related products,* between Chicago, IL, on the one hand, and, on the other, points in SD, NE, KS, OK, MN, IA, MO, AR, WI, and IN.

MC 148107 (Sub-10), filed February 26, 1982. Applicant: JESSE J. MESA, d.b.a MESA TRUCKING CO., 1500 S. Zarzamora St., San Antonio, TX 78207. Representative: Kenneth R. Hoffman, 1600 W. 38th St., Suite 410, Austin, TX 78731, (512) 451–7409. Transporting *drysalted and greensalted hides,* between points in TX, CA and CO.

MC 156077 (Sub-1), filed February 26, 1982. Applicant: MAXIE JAMES HUFFMAN, d.b.a. HUFFMAN TRUCKING, 11048 Roswell Ave., Pomona, CA 91766. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *transportation equipment,* (1) between points in CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY, and (2) between points in Canyon County, ID, on the one hand, and, on the other, points in AZ, CA and NV.

MC 158457 (Sub-1), filed March 1, 1982. Applicant: HARRY JUDGE, d.b.a. JUDGE TRUCKING COMPANY, East Side Dr., Chincoteague, VA 23336. Representative: Blair P. Wakefield, Suite 1001, First and Merchants National Bank Bldg., Norfolk, VA 23510, (804) 627–0070. Transporting *foodstuffs,* between points in Sussex County, DE and Accomack County, VA, on the one hand, and, on the other, points in AL, CA, CO, CT, DE, FL, GA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, NH, NJ, NV, NY, OH, OR, PA, RI, SC, TN, UT, VA, VT, WA, WI, WV, and DC.

Volume No OP5–54

Decided: March 4, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 29848 (Sub-4), filed February 24, 1982. Applicant: RONALD L. CLOUTIER, INC., 250 Brownell Lane, Portsmouth, RI 02871. Representative: Russell B. Curnett, P.O. Box 366, 826 Orleans Rd., Harwich, MA 02545, (617) 432–0907. Transporting *building materials, forest products, lumber and wood products, and such commodities* as are dealt in by wholesale lumber companies, between points in the U.S. (except AK and HI), under continuing contract(s) with Limber Sales Management Corp., of Needham, MA, and Weyerhaeuser Company, of Tacoma, WA.

MC 40978 (Sub-92), filed February 23, 1982. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, 3321 So. Business Drive, Sheboygan,WI 53081. Representative: Daniel R. Dineen, 710 No. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between Chicago, IL, on the one hand, and, on the other, points in IA, IL, IN, KY, MI, MN, MO, OH, and WI.

MC 124579 (Sub-34), filed February 24, 1982. Applicant: WIKEL BULK EXPRESS, INC., Rt. 2, Huron, OH 44839. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *bulk commodities* between those points in

the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 143908 (Sub-3), filed February 24, 1982. Applicant: GEORGE F. GREEN TRANSPORT, INC., 701 Hardeman Avenue, Ft. Valley, GA 31030. Representative: Kim G. Meyer, 235 Peachtree St., NE, Atlanta, GA 303, (404) 522–2322. Transporting *minerals, chemicals and related products,* between points in AL, FL, GA, TN, and SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MO, MS, NC, OK, SC, TN, and TX.

MC 151789, filed February 24, 1982. Applicant: EASTERN CARRIERS, INC., P.O. Box 8492, Sta. A, Greenville, SC 29604. Representative: Mitchell King, Jr., P.O. Box 5711, Greenville, SC 29606, 803–288–6000. Transporting *iron and steel articles,* between points in the U.S. (except AK and HI) under continuing contract(s) with Jersey Shore Steel Company of Jersey Shore, PA.

MC 152649 (Sub-10), filed February 22, 1982. Applicant: RIVERLAND TRUCKING CO., INC., Post Office Drawer BC, Reserve, LA 70084. Representative: Harold O. Orlofske, P.O. Box 368, Neenah, WI 54956, (414) 722–2848. Transporting (1) *packaging products and packaging materials and supplies,* between points in AL, AR, FL, GA, IL, KY, LA, MI, MS, NC, SC, TN, and TX, and (2) *food and related products,* between points in St. Charles Parish, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, MS, NC, NE, OH, OK, SC, TN, TX, VA, and WI.

MC 155749, filed February 22, 1982. Applicant: HWD CARRIERS, INC., 1 Shore Road, Glenwood Landing, NY 11547. Representative: George Carl Pezold, 120 Main St., Huntington, NY 11743, (516) 427–0100. Transporting *hazardous waste materials,* (except radioactive waste), between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the eastern boundary of Itasca County, MN, thence northward along the eastern boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of hazardous waste materials shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 158859, filed February 24, 1982. Applicant: O. DEAN TRANSPORTATION, INC., 406 W. Williamsburg Rd., Sandston, VA 23150. Representative: P. Owen Dean (same address as applicant), (804) 737–7838. Transporting (1) *machinery,* under continuing contract(s) with Safeguard Engines, Inc., of Nashville, TN, and (2) *food and related products,* under continuing contract(s) with Interbake Foods, Inc., of Richmond, VA, between points in the U.S. (except AK and HI).

MC 159959, filed February 25, 1982. Applicant: ROWE & LONG TRANSPORT COMPANY, INC., P.O. Box 67, Nichols, GA 31554. Representative: Kim G. Meyer, 235 Peachtree St. N.E. Suite 1200, Atlanta, GA 30303, 404–522–2322. Transporting *building materials,* between points in GA, FL, SC, NC, TN, KY, AL, MS, AR, WV and LA.

MC 160488 (Sub-1), filed February 26, 1982. Applicant: BADGER TRANSPORT, INC., Route 2, Box 75, Clintonville, WI 54929. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, 608–238–3119. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Peterson Built Products, Inc., of Clintonville, WI.

MC 160708, filed February 23, 1982. Applicant: BARDEN ENTERPRISES, INC., d.b.a. VITO'S TOWING SERVICE, 936 Cranston St., Cranston, RI 03920. Representative: Charles R. Reilly, 391 Davisville Rd., North Kingstown, RI 02852, 401–884–0969. Transporting *New, used, wrecked and/or disabled vehicles,* between points in CT, MA, NY, and RI.

MC 160709 (Sub-1), filed February 23, 1982. Applicant: JAPAN TRAVELERS SERVICE, INC., 1100 Seventeenth St., N.W., Suite 311, Washington, DC 20036. Representative: Barry R. Diamond, 805 King St., 4th Floor, Alexandria, VA 22314, 703–549–8010. As a *broker* at Washington, DC, in arranging the transportation of passengers and their baggage in the same vehicle with passengers, beginning and ending at points in VA, MD, and DC, and extending to points in the U.S. (except AK and HI).

MC 160768, filed February 26, 1982. Applicant: ALVIN E. JOYNER, d.b.a. JOINER INLAND GARAGE, 3517 Crawfordsville Rd., Tallahassee, FL 32301. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302, 904–576–1221. Transporting *motor vehicles,* between points in FL, GA, and AL, on the one hand, and, on the other, points in FL, GA, AL, LA, MS, SC, and NC.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–7034 Filed 3–15–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given of the meeting of the Advisory Committee on Voluntary Foreign Aid, which will be held on March 25 (from 9:00 a.m. to 5:00 p.m.), at the Prince George Hotel, 14 East 28th Street, New York, New York 10016, and on March 26 (from 9:00 a.m. to 12:00 noon), 1982, in the Dag Hammarskjold Library Auditorium in the United Nations Building, New York, New York 10017.

Most of the two-day meeting will be devoted to a program built around the subject of non-profit/American corporate collaboration in Third World development. A combination of panels, discussion, and informal work groups have been designed for a substantive exchange of experience and points of view regarding this collaboration.

The second major area of discussion will address the AID–PVO policy statement. AID officials will be available, PVOs will give testimony, and the Advisory Committee will comment.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Committee in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty copies.

Dr. Toye Brown Byrd will be the AID representative at the meeting. It is suggested that those desiring further information contact Dr. Byrd at 703/235–2708, or by mail c/o the Advisory Committee on Voluntary Foreign Aid, Agency for International Development, Washington, D.C. 20523.

Dated: March 5, 1982.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 82–7049 Filed 3–15–82; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-117]

Certain Automatic Visors; Erratum to Notice of Investigation

In the Notice of Investigation published in this matter at 47 FR 9296 (March 4, 1982), the address of respondent Toyota Motor Sales Co., Ltd. of Japan was incorrectly listed. The correct address is as follows: Toyota Motor Sales Co., Ltd., 23–22 Izumi, 1-Chome, Higashi-Ku, Nagoya-shi, Aichi, 461 Japan.

It is requested that a copy of this notice be published in the Federal Register.

Respectfully submitted,

Oreste Russ Pirfo,

Commission Investigative Attorney, International Trade Commission, Washington, D.C. 20436.

[FR Doc. 82-7084 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-105]

Certain Coin-Operated Audiovisual Games and Components Thereof (Viz., Pac-Man and Rally-X); Issuance of Temporary Cease and Desist Orders

AGENCY: International Trade Commission.

ACTION: Issuance of temporary cease and desist orders.

SUMMARY: Notice is hereby given that the Commission has issued temporary cease and desist orders in the above-captioned investigation. Pursuant to the orders, the named respondents are directed to cease and desist from the importation and sale of coin-operated audiovisual games which there is reason to believe infringe complaints Midway Manufacturing Co.'s copyright in the Pac-Man audiovisual work and common law trademark in the term "Pac-Man."

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background

The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain coin-operated audiovisual games and components thereof which are alleged to infringe Midway's copyrights and common law trademarks. Notice thereof was published in the Federal Register of July 1, 1981 (46 FR 34436).

On January 4, 1982, the Commission determined (Commissioner Stern dissenting) that there is reason to believe that a violation of section 337 exists with regard to the Pac-Man game and that there is no reason to believe that a violation exists with regard to the Rally-X game. The Commission determined that the appropriate remedy is the issuance of cease and desist orders to be in force and effect for the remaining term of the investigation. Pursuant to the orders, the named respondents may not import, except under bond, or sell any coin-operated audiovisual game or certain components thereof which display a work substantially similar to Pac-Man. In addition, the named respondents may not import audiovisual game machines which display the term Pac-Man or confusingly similar terms, except into the Hawaiian market under written authorization of K & K Industrial Services.

Respondents

The following persons are directed to cease and desist: Artic International, Inc.; Carlin Tiger Shokai, Ltd.; Ferncrest Distributors, Inc.; Formosa Products Industrial Corp.; Friend Spring Industrial Co., Ltd.; International Scientific Co., Ltd.; Jay's Industries; K & K Industrial Services; Kyugo Co., Ltd.; Loson Electrical Co.; Morrison Enterprises Corp.; Nippon Semicon, Inc.; Omni Video Games, Inc.; Stan Rousso, Inc.; Seagull Industries Co., Ltd.; Sepac Co., Ltd.; Shoei Co., Ltd.; and SP-World-Amusement Co., Ltd.

Public Inspection

Copies of the Commission's Action and Order, the Cease and Desist Orders, and all other public documents on the record of the investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: January 15, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-7083 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

Certain Cube Puzzles; Amendment of Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Amendment of notice of investigation to add 16 new respondents pursuant to § 210.22(a) of the Commission's Rules of Practice and Procedure.

SUMMARY: On March 10, 1982, the Commission granted a motion (Motion No. 112–1) to amend the notice of investigation in this investigation to add 16 additional persons as respondents. These persons are alleged to be engaged in the unfair acts of infringing complainant Ideal Toy Co.'s common-law trademark, false designation of origin, and passing off of certain cube puzzles.

The Commission has instructed the presiding officer not to schedule an expedited final hearing unless she determines that the rights of the new respondents will not be prejudiced thereby.

SUPPLEMENTARY INFORMATION: On January 22, 1982, complainant moved (Motion No. 112–1) to amend the notice of investigation to add 16 new respondents, all of which are alleged to be engaged in the unfair acts of common-law trademark infringement, false designation of origin, and passing off of the cube puzzles in controversy. On February 8, 1982, the presiding officer issued a recommended determination that the motion be granted (Order No. 4). After consideration of Motion No. 112–1, the response thereto by the Commission investigative attorney, and the presiding officer's recommended determination, the Commission determined to amend its notice of investigation by the joinder of the following respondents:

Chadwick Miller, Inc., Pequot Industrial Park, 300 Turnpike Street, Canton, Mass. 02021;

Dajare, Inc., 19 West 24th Street, New York, N.Y. 10010;

Eurasia Merchandise, Inc., 41 West 42d Street, New York, N.Y. 10036;

Imperial Merchandise, Inc., 19 East 21st Street, New York, N.Y. 10010;

Kingstone International, 225 W. 134th Street, Los Angles, Calif. 90061;

Robert S. Koons and Associates, 332 W. Jackson Road, Webster Groves, Mo. 63119;

E. J. Korvettes, Inc., 1293 Broadway, New York, N.Y. 10001;

Mecca Electronic Industries, Inc., 1167 Broadway, New York, N.Y. 10001

Mark Metzner, Inc., 650 Anthony Trail, Northbrook, Ill. 60062;
Neat Things Importing Ltd., Suite 3111, 910 Mainland Street, Vancouver, B.C., Canada;
Price King, Inc., 890 Broadway, New York, N.Y. 10003;
Sajra Distributors (a division of Sajra Discount Department Stores, Inc.), 757 East Tremont Avenue, Bronx, N.Y. 10457;
Sears, Roebuck & Co., 10 S. Canal, Sears Tower, Chicago, Ill. 60684;
Supreme Import-Export, D–M Sale Corp., 911 Broadway, New York, N.Y. 10010;
F. W. Woolworth Co., 233 Broadway, Woolworth Building, New York, N.Y. 10279;
Rick Zofkie, P.O. Box 54, Wapakoneta, Ohio 45895.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202–523–0359.

By order of the Commission.

Issued: March 11, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–7077 Filed 3–15–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–119]

Certain High-Precision Solenoids and Components Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 8, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Ledex, Inc., 801 Scholz Drive, Vandalia, Ohio 45377. An amendment to the complaint was filed on February 22, 1982. The amended complaint (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the importation of certain high-precision solenoids into the United States, or in their sale, by reason of alleged (1) tortious interference with contractual relationships, (2) misappropriation of trade secrets and confidential business information, (3) infringement of complainant's copyrights, (4) infringement of complainant's common law trademarks, and (5) false designation of origin. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue both a permanent exclusion order and a permanent cease and desist order.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 9, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain high-precision solenoids and components thereof into the United States, or in their sale, by reason of alleged (1) tortious interference with contractual relationships, (2) misappropriation of trade secrets and confidential business information, (3) infringement of complainant's copyrights, (4) infringement of complainant's common law trademarks, and (5) false designation of origin, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Ledex, Inc., 801 Scholz Drive, Vandalia, Ohio 45377

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Shindengen Electric Manufacturing Co., Ltd., New Ohtemachi Bldg., 2–1, 2-chome Ohtemachi, Chiyoda-ku, Tokyo 100, Japan;
Densitron Corp., Daini-Hasegawa Bldg., 4th Floor, 1–12–4 Hamamatsucho, Minato-ku, Tokyo 105, Japan;
Photo Chemical Products of California, Inc., 1715 Berkeley Street, Santa Monica, California 90404;
EM Devices, Inc., P.O. Box 158, Troy, Ohio 45373;
Taylor Marketing and Sales Co., 4328 N. Woodburn Ave., Milwaukee, Wisconsin 53211;
Zaslow Sales Co., Inc., 105 Old Windsor Road, Bloomfield, Connecticut 06002;
Dynel Co., 270 Regency Ridge, Suite 119, Dayton, Ohio 45459;

(c) Ralph Elsas-Patrick, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission Investigative Attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: Ralph Elsas-Patrick, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0440.

By order of the Commission.

Issued: March 10, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–7085 Filed 3–15–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-87 (Preliminary)]

Certain Seamless Steel Pipes and Tubes From Japan

Determination

On the basis of the record [1] developed in investigation No. 731-TA-87 (Preliminary), the Commission determines that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports from Japan of the following seamless steel pipe and tube products which are alleged to be sold in the United States at less than fair value (LTFV):

Seamless heat-resisting steel pipes and tubes provided for in items 610.5209, 610.5229, and 610.5234 of the Tariff Schedules of the United States Annotated (TSUSA); and seamless stainless steel pipes and tubes, provided for in TSUSA items 610.5205, 610.5229, or 610.5230.[2]

The Commission [3] determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reasons of imports from Japan of seamless alloy steel (other than stainless or heat-resisting steel) pressure [4] pipes and tubes, provided for in items 610.5209 of the TSUSA, which are alleged to be sold in the United States at LTFV.

Background

On January 20, 1982, the U.S. International Trade Commission and the U.S. Department of Commerce received a petition from counsel on behalf of Babcock & Wilcox Co., a U.S. producer of seamless steel pipes and tubes, alleging that an industry in the United States was being injured by imports of certain seamless steel pipes and tubes from Japan which were alleged to be sold at LTFV. Accordingly, the Commission instituted this preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of the imports of such merchandise into the United States. The statute directs that the Commission make its determination within 45 days after its receipt of a petition, or in this case by March 8, 1982.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. and by publishing the notice in the **Federal Register** on January 28, 1982 (47 FR 4164). The public conference was held in Washington, D.C. on February 10, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, Comissioner Paula Stern and Commissioner Alfred Eckes

Summary

The Commission unanimously finds that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of heat-resisting steel pipes and tubes from Japan which are allegedly sold at less than fair value (LTFV). A Commission majority finds that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of seamless stainless steel pipes and tubes from Japan.[5] A Commission majority also finds that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of seamless alloy pressure pipes and tubes from Japan.[6]

Introduction

This is the second investigation of steel pipes and tubes from Japan by the Commission under the antidumping provisions of the Tariff Act of 1930. In the first investigation, which was filed by the same petitioner as in the current case, LTFV sales were alleged with respect to several products, including welded, seamless, carbon, and noncarbon pipes and tubes. These products were described by their use, e.g., "boiler tubes" and "process pipes."

The Commission's determinations as to material injury or threat in that preliminary case were appealed to the U.S. Court of International Trade, which remanded the case to the Commission. Judge Richardson of the Court took issue with the factors used by the Commission to define the domestic industry. He also instructed the Commission to attempt to collect profit and loss data on the narrowest range of products for which information is available.

On September 4, 1980, the Commission and Babcock & Wilcox reached an agreement to move to vacate the order and opinion of Judge Richardson upon acceptance of a new petition for pipes and tubes by the Department of Commerce. This new petition (the subject of the current investigation) named a different set of products, which included only noncarbon, seamless pipes and tubes and was not limited to pipes and tubes for boiler use.

The Domestic Industry

In any antidumping investigation, the Commission must determine whether a domestic industry is materially injured or threatened with material injury by reason of the allegedly dumped imports. The first element of this task is to determine the scope of the industry to be examined. In this investigation, the definition of the industry is particularly complex. We emphasize that our definition of industry at this preliminary stage is based on the information now available, and it may change in any resulting final investigation.

The industry is defined by the statute as the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.[7] Like product is defined as a product which is like or, in the absence of like, most similar in characteristics and uses with the article under investigation.[8]

In this investigation the products allegedly being imported at LTFV consist of seamless stainless steel pipes and tubes, seamless heat-resisting steel pipes and tubes, and seamless alloy pressure steel pipes and tubes, in varying lengths, widths, and thicknesses. The petitioner maintains that there are three like products and, in turn, there are three industries experiencing injury from allegedly dumped imports: seamless alloy

[1] The record is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Commissioners Alberger and Stern dissenting.

[3] Commissioner Frank dissenting.

[4] Suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, and feedwater heaters.

[5] Chairman Alberger and Commissioner Stern make their affirmative determinations only with regard to heat-resisting pipes and tubes.

[6] Commissioner Frank makes an affirmative determination with regard to seamless alloy steel pressure pipes and tubes from Japan.

[7] 19 U.S.C. 1677(4)(A).

[8] 19 U.S.C. 1677(10).

pressure pipes and tubes,[9] seamless heat-resisting steel pipes and tubes, and seamless stainless steel pipes and tubes. We find that the petitioner has presented sufficient information for a preliminary determination that there are three separate industries in the United States manufacturing products like the imported goods.[10] However, there are a number of issues bearing on the definitions of "like product" and "domestic industry" which must be examined further in any final determination.

The key to the petitioner's industry definition is the chromium content of the steel used for the pipes and tubes. Pipes and tubes are defined as "alloy" if they contain from .2 percent up to 4 percent chromium, "heat-resisting" if they contain more than 4 percent but less than 10 percent chromium, and "stainless steel" if the chromium content is 10 percent or more. These divisions based on chromium content correspond to categories listed by the American Iron and Steel Institute, and are close to those now in use in the Tariff Schedules of the United States Annotated (TSUSA).[11]

Until 1980, the TSUSA combined import data for seamless heat-resisting and stainless steel pipes and tubes. These two categories also were combined by the petitioner in the earlier investigation. On the other hand, individual company price lists from companies included in this investigation combine prices for seamless heat-resisting and alloy pressure steel pipes and tubes on a single list; none of the prices lists submitted provide separate headings for heat-resisting products.

The chromium content of pipes and tubes has a direct bearing on their use. Heat resistance and resistance to corrosion increase as chromium is added to the steel mix. However, there appears to be no commonly recognized division between these three types of pipes and tubes on a use basis. At the margins, choices may be made by engineers based on such factors as economy or availability.

Production process is another factor to be examined in assessing the like product and industry scope because it may reveal certain distinguishing characteristics of the products. In this case, a division on the basis of production process is found only with regard to stainless steel pipes and tubes, 80 percent of which are extruded rather than pierced and are produced in separate facilities. Emphasis on production then, could result in a finding of two industries.

The petitioner and other domestic producers were able to supply profit and loss data for each of the three industries named. In fact, the petitioner could provide data for every individual order because of its accounting methods.

Material Injury by Reason of LTFV Imports

Section 771(7) of the Tariff Act of 1930 directs the Commission to consider in making its determination, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on price, and (3) the consequent impact of the imports on the domestic industry.[12] In assessing the impact on the domestic industry we are further directed by section 771(7)(c)(iii) to evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to: production, sales, market share, profits, productivity, return on investments, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

In this investigation, we have been able to obtain limited, if any, data on some of the economic factors listed above. For other factors, the data which we have collected have certain inherent weaknesses that limit their relevance and utility to our determination. In particular, the information submitted to the Commission by domestic producers concerning capacity and capacity utilization was not considered reliable for specific products because of the reported ability of producers to shift easily from making one product to another on the same equipment, particularly with regard to the heat-resisting and alloy pressure products, which are generally produced on the same piercing mills. Similar limitations exist with respect to data concerning employment, investment, and return on investment. As is discussed in detail in the accompanying report,[13] the reported profit-and-loss data are limited in their use as an absolute measure of profitability. They are based on inherently arbitrary, although internally consistent, methods of allocation. Nevertheless, we have more complete coverage of profitability data[14] for each of the three like products than in the prior investigation, and the information can provide useful indications of profit patterns for each product. In addition, we were unable to obtain pricing data from U.S. producers and importers on their sales of comparable products.[15]

Seamless Heat-Resisting Pipes and Tubes.—From 1979 to 1981, the imports of seamless heat-resisting steel pipes and tubes from Japan increased dramatically, both in tonnage and as a share of apparent U.S. consumption. Japanese import tonnage in the heat-resisting category almost tripled from 1980 to 1981, and import penetration almost doubled.

The dramatic increase in imports of seamless heat-resisting products from 1980 to 1981 affected the performance of the domestic industry. Production and domestic shipments of the heat-resisting product both fell significantly from 1980 to 1981 and the profitability of the seamless heat-resisting pipe and tube industry which had already dropped substantially from 1979 to 1980 fell again in 1981. The steady decline in the condition of the industry since 1979 and the concomitant growth of imports from Japan, admittedly underselling the U.S. product,[16] lead us to conclude that there is a reasonable indication that the domestic seamless heat-resisting steel pipe and tube industry is being materially injured or threatened with material injury[17] by reason of imports of the product from Japan.

Seamless Alloy Pressure Pipes and Tubes.—During the period of this investigation, imports from Japan declined and the Japanese share of the U.S. market fell slightly. Domestic production and shipments of alloy pressure products fell from 1979 to 1980, but recovered somewhat in 1981.

The profitability picture of the alloy pressure industry was very good during

[9] The petitioner alleges that only the "pressure" type of alloy pipe and tube is being imported in such quantities as to materially injury or threaten the domestic industry. Structural and mechanical pipes were included by the petitioner in addition to pressure pipes under the heat-resisting and stainless categories. This categorization raises the question of whether the stainless and heat-resisting categories should be examined in any final investigation as separate "like products" in terms of their pressure, mechanical, or structural uses.

[10] Chairman Alberger and Commissioner Stern point out that this division was advantageous to the petitioner, as a finding of one or two industries would have led then to negative determinations and the possible termination of this entire investigation. Given the unusual complexity of the industry issue in this case, they are not willing to discard any of the suggested definitions at this preliminary stage.

[11] The TSUSA defines stainless steel as having more than 11.5 percent chromium content.

[12] 19 U.S.C. 1677(7).

[13] See p. A-22 of the Report.

[14] Nine companies in this investigation provided the Commission with profitability data.

[15] Report, p. A-29.

[16] An economist for ICF, Inc., a consulting firm appearing on behalf of Sumitomo, acknowledged that underselling of the products under investigation ranged up to 25 percent.

[17] Chairman Alberger finds a reasonable indication that the alleged LTFV imports of seamless heat-resisting steel pipes and tubes are a cause of present material injury and therefore does not reach the issue of threat of material injury.

the period examined. Although profits dropped from 1979 to 1980, they remained at a healthy level. During the interim 1981 period, profits increased substantially above the 1979 level. With this strong financial performance and the recently declining role of imports from Japan, we conclude that, despite underselling, there is not a reasonable indication that an industry in the U.S. is materially injured or threatened with material injury by reason of imports of the product from Japan.

Views of Vice Chairman Michael J. Calhoun and Commissioner Alfred Eckes on Seamless Stainless Steel Pipes and Tubes

We find that there is a reasonable indication that the domestic industry producing stainless steel pipes and tubes is materially injured or threatened with material injury by reason of imports from Japan of these products which are allegedly sold at less than fair value (LTFV).

In reaching this conclusion, we focused primarily on the large share of the domestic market held by allegedly LTFV imports and the 28 percent rise in the volume of Japanese stainless pipe and tube imports entering the U.S. between 1980 and 1981. This increase in imports outpaced the increase in U.S. consumption of stainless steel pipes and tubes during the same period.[18] The share of the domestic market for this product, already subtantial in 1980, increased in 1981. Such a large market share held by allegedly LTFV imports is hard to ignore in a preliminary investigation. Given this level of market penetration, we must assume these imports have a significant impact on the pricing practices of the domestic industry, absent information to the contrary.

Indeed, there is evidence that Japanese imports may well be having some effect on prices in this industry. Information on pricing and lost sales is understandably sparse in a 45-day preliminary investigation, but it is evident that underselling by Japanese imports has occurred. Sumitomo, the major importer of pipes and tubes admitted such underselling. Although domestic *list* prices for stainless pipes and tubes increased almost 39 percent between 1979 and 1981, at least one domestic company indicated that it had been forced to offer discounts to meet Japanese competition.

Large increases in import volume, the capture of a substantial share of the market by imports, and the price depression suggested by our data can be expected to result in material injury to domestic producers. In this connection, certain data obtained in this investigation do point to a reasonable indication of material injury or the threat thereof. Domestic production in 1981, although it exceeded that in 1980, was still below 1979 levels. Capacity utilization also rose in 1981, but remained substantially below the rate for 1979. Employment and total hours worked decreased steadily from 1979 to 1981. Earlier in this report, we discussed the problems encountered in judging data (particularly employment data) in this case. However, these statistics should not be ignored completely.

Chairman Alberger and Commissioner Stern stress profitability in determining that there is no reasonable indication of material injury or threat to the industry. They point to the profit in the interim period of 1981. However, in 1980 there was a loss in the corresponding period; and 1979, a relatively small positive return for the year.

We are not prepared to conclude in a preliminary investigation that a profit *per se* precludes a finding of a reasonable indication of material injury. Nor do we believe that one year of profit upturn is a sufficient basis for a negative finding in this case. A capital-intensive industry such as this one must show a positive trend in profits over a longer period to generate and attract necessary funds for modernization and for research and development. Further investigation may reveal there is such a trend. At this preliminary stage, however, we do not find that the profit figures prevent a finding of reasonable indication of material injury to the industry or the threat thereof.

Views of Chairman Bill Alberger and Commissioner Paula Stern on Seamless Stainless Steel Pipe and Tubes

Our rationale for a negative determination on seamless stainless pipes and tubes is similar to our views on seamless alloy pressure pipes and tubes. In both instances the condition of the U.S. industry is good and, despite the existence of underselling, the pattern of import penetration from Japan provides no reasonable indication of material injury or of real and imminent threat of material injury by reason of alleged LTFV imports.

Key trends for industry performance for seamless stainless pipe and tube producers parallel those for the seamless alloy pressure pipe and tube industry and contrast sharply with those for the seamless heat-resisting pipe and tube industry. Shipments and profitability for the seamless heat resisting pipe and tub industry fell regularly since 1979. The 1980–81 decline in the heat-resisting industry was concomitant with a near doubling of market penetration by alleged LTFV imports from Japan. On the other hand, shipments and profitability data for seamless stainless pipe and tube, like those for the seamless alloy pressure pipe and tube, declined in 1980 from 1979 levels but rebounded in 1981. From 1980–81 penetration by the alleged LTFV imports of seamless stainless pipes and tubes was basically steady.

The rebound in the profit level of the industry in 1981 is particularly significant. Financial performance in 1981 was well above the 1979 level and substantially greater than the 1980 level. The aggregate industry loss in 1980 took place during a decline in the market and when one company experienced a six-week strike.[19] Moreover, during the entire period of the investigation only one of the five U.S. producers reported losses. The other producers all had very good profits throughout the period.

Between 1980 and 1981 there was a significant increase in producitivity in the industry; the number of hours worked in the production of seamless stainless steel pipes and tubes decreased substantially while production of these products increased substantially.[20][21] Since data on imports from Japan do not demonstrate significant increased competitive pressure on domestic producers, the industry should continue to benefit from these productivity increases.

Views of Commissioner Eugene J. Frank

Introduction

I find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of seamless alloy steel pressure pipes and tubes, seamless heat-resisting steel pipes and tubes, and seamless stainless pipes and tubes, which are allegedly sold at less than fair value.[22]

First, I would note the following: the statute and legislative history of Title VII investigations require the Commission in its preliminary determinations for both antidumping and countervailing duty investigations

[18] Because much of the data considered have been granted confidential treatment, we are unable to discuss in this opinion the specific numbers before us.

[19] In addition, Report, p. A–14.

[20] See Report, p. A–19.

[21] Productivity reported varied significantly by company and may explain the divergent financial performance of the single unprofitable firm. The divergence may also relate to the extent to which each company is participating in the open market.

[22] This is the second investigation of steel pipes and tubes from Japan by the Commission under the antidumping provisions of the Tariff Act of 1930. The chronology of events with respect to the previous investigtion involving the same petitioner in which I did not participate leading up to the current investigation, is set forth in the majority's opinion on this case.

to exercise only a low threshold test based upon the best information available to it at the time of such determination that the fact reasonably indicate an industry in the United States could *possibly* be suffering material injury, threat thereof, or material retardation.[23] This less rigorous standard in my view was intended by Congress to screen those petitions where it was readily apparent, notwithstanding a necessarily incomplete record compiled in a compressed 45-day time period, that there was no indication of possibly establishing injury even with adequate time, a thorough and full developed investigation and record and a detailed hearing before the Commission.

For the sake of brevity and as appropriate background, I refer to the reader to my views on the recently concluded Commission preliminary antidumping and countervailing duty investigations on the 92 steel cases. In these views, the structural framework and context from which I maintain the Commission should review and analyze the information and record developed in these preliminary investigations, and render its determination accordingly, pursuant to this less rigorous low threshold standard (within the bounds of a focus on the "conditions of trade, competition, and development regarding the industry concerned") is more fully articulated.[24]

Domestic Industry

The industry is defined by the statute as the domestic producers as a whole of a like product or those producers whose collective output of the like product comprises a major proportion of the total domestic production of that product.[25] Like product is defined as a product which is like or in the absence of like, most similar in characteristics and uses with the article under investigation.[26]

In this investigation, the issue of industry definition from which determinations of "reasonable indication" of material injury must be rendered and whether the requisite causal linkage "by reason of" alleged unfairly traded imports is ascertained to exist in the context of the "low threshold" standard set forth hereinabove, is complex and controversial. Petitioner has alleged that there are three domestic industries being affected by imports—the seamless alloy steel pressure pipe and tube industry, the seamless heat-resisting steel pipe and tube industry, and the seamless stainless steel pipe and tube industry. Petitioner maintains that three "like products" which respectively define the aforesaid three industries, are distinguishable from the standpoint of product description (including chemical composition), American Society for Testing and Materials (ASTM) specifications, major applications, U.S. Tariff classification and other distinctions, including differences in distribution, marketing and production processes employed, and "reasonable" availability of separate profitability data according to generally accepted accounting principles.[27]

On the other hand, one of the respondents (Sumitomo Metal Industries, Ltd.) claims the petitioner's delineation of these three separate industries per se and vis-a-vis other segments of the steel pipe and tube industry are "arbitrary, insignificant, and legally irrelevant", claiming among other things, substitutability and interchangeability exists among certain steel materials depending upon metallurgical content and diameter specifications (according to engineering design considerations); the inconsistency of this delineation of "like products" with petitioner's "like product" delineation in the prior petition; contradiction of the categorization of "like products" with petitioner's sales literature; and states that the "* * * products addressed in the petition are all produced by the same industry, and that industry also produces many products not mentioned in the petition."[28]

There also appear to be "value" considerations tied to end-uses that can be grounds for differentiation among the spectrum of products comprising the three "like product" and industry groupings submitted to be applicable by the petitioner.

I have taken under advisement and considered the various arguments submitted both for and against petitioner's "like product" and industry definitions and the discussion of pertinent issues arising therefrom as set forth in the views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes. I concur with their determination that petitioner has presented sufficient information for the record to support a preliminary determination that there are three separate industries in the United States manufacturing products like the imported goods subject to this preliminary investigation, and also agree that a number of issues which have arisen in this respect bear further scrutiny in any final determination.

I would emphasize that such determination was not based on any one proportedly distinguishing factor such as production process, separate profitability, etc., but on a preponderance of several criteria I deemed relevant that point to rational distinctions *at this time* on a "like product" basis. The statute and legislative history do not provide an all inclusive listing of pertinent criteria (note the plural), but cite certain factors such as production process or producer's profits.[29] I believe the intent is clear that sufficient discretion is to be exercised by the Commission in arriving at appropriate determinations in this respect on a rational, factually-based, common-sense and consistent fashion. I would point out that further information developed in any final investigation in this regard will be carefully considered in any final determination I might render in this respect.

Section 771(7)(A) of the Act defines "material injury" to mean harm "which is not inconsequential, immaterial, or unimportant."[30]

Section 771(7) of the Act directs the Commission to consider, in making its determination, among other factors, (1) the volume of imports of the merchandise under investigation, (2) their impact on price, and (3) the consequent impact of imports on the domestic industry.[31] I would add that the statute and pertinent legislative history make it clear with respect to volume of imports, the Commission would consider whether the volume of imports is *significant*, with the disjunctive "or" whether there is any significant increase in that volume absolutely or relative to U.S. production or consumption.[32]

Specific factors to be examined in consideration of material injury are detailed in Section 771(7)(C) and are not all-inclusive as the legislative history emphasized.[33] The statute and

[23] H.R. Report No. 96-317, 96th Cong., 1st Sess., p. 52 (1979).

[24] *Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany*, USITC Publication 1221, February 1982, pp. 121-185.

[25] 19 U.S.C. 1677(4)(A).

[26] 19 U.S.C. 1677(10).

[27] Petition of Babcock & Wilcox Company, dated 1/20/82, pp. 11-20; Post-Conference Brief of Babcock & Wilcox, 2/12/82, pp. 1-12.

[28] Brief of Coudert Brothers dated February 12, 1982, on Behalf of Respondent Sumitomo Metal Industries, Ltd., pp. 4-9, which sets forth its argument in detail opposing Petitioner's "like product" and industry delineation.

[29] 19 U.S.C. 1677(4)(D); Report of the Committee on Finance, U.S. Senate on H.R. 4537, pp. 82-84.

[30] 19 U.S.C. 1677(7)(A).

[31] 19 U.S.C. 1677(7).

[32] Senate Report, pp. 86-87.

[33] 19 U.S.C. 1677(7)(C); Senate Report, p. 67.

legislative history also makes clear that the presence of absence of any of the specific factors which the Commission examines would not necessarily provide decisive guidance with respect to determinations regarding injury.[34]

Although there are inherent limitations in certain "economic" data submitted to the Commission by domestic producers and perhaps questionable reliability with regard to capacity and capacity utilization, employment, investment, etc., I beleive such data cannot be dismissed and discarded in entirety inasmuch as perhaps trends can be ascertained which are germane to injury considerations under a "low threshold" standard applicable in preliminary investigations. One of the concerns I think is relevant to any application of the "like product" industry definition approach in determining injury pursuant to the statute, employed in a "universe" comprised by multi-product integrated operations, is an inherent degree of arbitrariness in allocation of economic factors *exclusively* to various product-lines. One can become mired in a quagmire of assumptions as to e.g. there reasonability and consistency of application in a narrow-focused product-line analysis, yet face the dilemma of taking into consideration extraneous and perhaps inappropriate data if an industry definition were expanded, based on necessarily available data. I would expect a final investigation if conducted, to discuss thoroughly these underlying assumptions and their application for such data.

However, I have extreme misgivings about the advisability of using profit-and-loss data reported in this case. As was pointed out in the report, the data (reported by 9 U.S. producers) as developed are limited in their use as a measure of profitability.[35] It was disclosed five producers used a standard cost system of accounting, while others used a process cost, direct cost, or job order cost system, to account for the accumulation of cost data with all general, selling, and administrative expenses for each product allocated. It is indicated that such data should reflect a "reasonable profit trend on each product line" if each producer were "consistent from year to year in its use of its respective allocation base (and there is no evidence to the contrary) * * *" [36] Aside from the fact even granting the assumption of consistent year to year cost application by respective producers which there is no evidence evidently to corroborate either, the data might be reliable in terms of "trends" but *invalid* nevertheless. Consequently, I have discounted all profitability data from my analyses in this preliminary investigation in the expectation that the staff would be in a position in a final investigation, to obtain such data on a uniform, consistent cost-allocation basis for all domestic producers.

Seamless Heat-Resisting Pipes and Tubes

I concur in general with the analysis, except for profitability considerations, of the Commission majority as articulated in the Views of Chairman Alberger, Vice Chairman Calhoun, and Commissioners Stern and Eckes, that leads me to the determination that there is a reasonable indication that the domestic seamless heat-resisting steel pipe and tube industry is being materially injured by reason of allegedly LTFV imports from Japan.[37]

Seamless Stainless Steel Pipes and Tubes

I concur in general with the analysis, except for profitability considerations, set forth in the views of Vice Chairman Calhoun and Commissioner Eckes on seamless stainless steel pipes and tubes that leads me to the determination there is a reasonable indication that the domestic seamless stainless steel pipe and tube industry is being materially injured by reason of allegedly LTFV imports from Japan.[38]

Seamless Alloy Pressure Pipes and Tubes[39]

Production, capacity, and capacity utilization showed declines in 1981 from 1979 levels, though increasing somewhat from 1980 figures, with U.S. shipments following the same trends, though captive domestic shipments increased substantially from 1979 levels as a percentage of total shipments. Employment and hours worked similarly showed declines in 1981 from 1979 levels.[40] During this period imports from Japan (the largest exporter of seamless alloy steel pressure pipes and tubes) of the articles in question decreased in 1980 from 1979 levels, though maintaining the same penetration levels in terms of domestic consumption, but increased slightly in 1981 from 1980 levels with penetration dropping somewhat in 1981, but still representing significant levels of market penetration in 1981.[41] It is important to note that imports of seamless alloy steel oil and gas well tubing and drill pipe entered under the same TSUSA item as seamless alloy steel pressure pipes and tubes in 1980–81 (beginning on January 1, 1982, these oil country tubular goods conforming to A.P.I. specifications enter under separate TSUSA items). Total imports under this item from Japan increased substantially in volume from 1980–81. The report states that questionnaire data indicate that the "bulk of this increase from Japan can be attributed to imports of oil country tubular goods," and that the staff verified this by examination of Special Summary of Steel invoices (SSSIs) at the Department of Commerce.[42] [43] We were advised that on the basis of this examination, the articles in question comprised a certain percentage of the TSUSA "basket", but questionnaire data reflected slightly higher levels which were used in the Report. About 30 percent of SSSI's have been examined by staff, which is considered to be a "representative" sample that essentially confirms the conclusions drawn to date regarding the aggregated data. We also have been advised that quarterly data for imports of the articles in question were not available (although they were for the seamless heat-resisting pipes and tubes and seamless stainless steel pipes and tubes) that might more clearly show trends in import levels, in view of the aggregation with oil country tubular goods. I believe, however, that a more thorough and comprehensive examination of these data would have been prudent if this investigation for this industry would have been continued.

The report indicates that data requested by unit values (proxies for prices) from importers and domestic producers for specific ranges of pipes and tubes in each of the three product categories and that obtained reflect the fact that the product categories used in the questionnaires were too broad and that unit values may not be a satisfactory means of comparing transaction prices of imported and domestic products "either across sources of supply or over time".[44]

[34] 19 U.S.C. 1677(7)(C); Senate Report, p.87.

[35] Report at A–22.

[36] Id.

[37] Having reached a determination of reasonable indication of material injury for this industry, I did not reach the issue of threat of material injury.

[38] Having reached a determination of reasonable indication of material injury for this industry, I did not reach the issue of threat of material injury.

[39] In view of the fact that much of the data considered have been granted confidential treatment, the discussion here by necessity focuses on generalized trends.

[40] Report at A–18 through A–20.

[41] Report at A–25 through A–27.

[42] Report at A–25.

[43] Note, the Report by ICF Inc. dated February 12, 1982, consultants to Sumitomo Metals Ltd. in analyzing Petitioner's data evidently did not discount OCTG's from import data of Petitioner

Nevertheless, there was a considerable amount of testimony attesting to underselling of such products by imports from Japan, including an admission to that effect from a consultant to Sumitomo (ICF Inc.), the major importer of pipes and tubes.[45]

In view of the discernible industry trends, the still significant presence of imports from Japan and evidence of underselling developed to date, I have determined that there is a reasonable indication that the domestic industry has suffered material injury by reason of allegedly LTFV imports from Japan.[46] Although additional data need to be obtained as stated herein, I believe the petitioner has presented, under the prescribed "low threshold" standard for preliminary cases, a sufficiently meritorious case justifying continuation of the investigation by the administering authority (Commerce) and the Commission, if called upon to do so.

By order of the Commission:

Issued: March 8, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-7078 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-118]

Certain Sneakers With Fabric Uppers and Rubber Soles; Order

Pursuant to my authority as Chief Administration Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation with the understanding that a Recommended Determination as to temporary relief will be rendered by May 10, 1982, if consistent with due process.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: March 8, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 82-7081 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

with Census data. Staff evidently attributed much of the increase and discounted accordingly for oil country tubular goods (OCTG) as also claimed by Coudert Brothers, counsel for Sumitomo, in its February 12 brief. We have been advised petitioner also by amendment to its petition requested exclusion of OCTG but did not have access to the figures to make adjustments.

[44] Report at A-30.

[45] Report at A-30 and A-32; also see February 1, 1982 ICF Report, p. 30.

[46] Having reached a determination of reasonable indication of material injury for this industry, I did not reach the issue of threat of material injury.

[Investigation No. 701-TA-145 (Preliminary)]

Certain Steel Wire Nails From Korea

Determination

On the basis of the record [1] developed in investigation No. 701-TA-145 (Preliminary), the Commission determines that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury [2] by reason of imports from Korea of steel wire nails [3] provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS) upon which bounties or grants are allegedly being paid.[4]

Background

On January 19, 1982, the U.S. International Trade Commission and the U.S. Department of Commerce received a petition from counsel on behalf of Atlantic Steel Co., Florida Wire and Nail Co., New York Wire Mills Corp., Virginia Wire and Fabric Co., Tree Island Steel, Inc. and Armco Inc., U.S. producers of steel wire nails, alleging that they were being injured by imports of steel wire nails from Korea upon which bounties or grants are allegedly being paid. Accordingly, the Commission instituted this preliminary countervailing duty investigation under section 703(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of the imports of such merchandise into the United States. The statute directs that the Commission make its determination within 45 days of the receipt of such advice or in this case by March 5, 1982.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC and by publishing the notice in the **Federal Register** on January 27, 1982 (47 FR 3896). The public conference was held in Washington, D.C. on February 12, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

We have found that there is a reasonable indication that a domestic industry is materially injured or is threatened with material injury [5] [6] [7] by reason of allegedly subsidized imports of certain steel wire nails from Korea. Our determination in the present case is based on the considerations set forth below.

Domestic Industry

In order to make a determination that there is a reasonable indication that a domestic industry is materially injured or is threatened with material injury, we must first define the domestic industry. Section 771(4)(A) of the Tariff Act of 1930 provides that the domestic industry consists of the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product. A like product is in turn defined as a product which is like or in the absence of like, most similar in characteristics and uses with the article under investigation.

For purposes of this preliminary determination we adopt the like product analysis of our earlier investigations, *Certain Steel Wire Nails from Japan, the Republic of Korea and Yugoslavia,*[8] and *Certain Steel Wire Nails from Korea.*[9] We find that there are seven like products, which correspond precisely with each of the seven distinct types of nails being imported, and are characterized by different nail coatings. These seven like products are

[1] The record is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Chairman Alberger and Commissioner Frank determine that an industry in the United States is materially injured by reason of imports from Korea of steel wire nails provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States upon which bounties or grants are allegedly being paid.

[3] For purposes of this investigation, brads, spikes, staples, and tacks are not included.

[4] Reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[5] Retardation of establishment of an industry is not an issue in this investigation and will not be further discussed.

[6] Chairman Alberger and Commissioner Frank find a reasonable indication of material injury by reason of these allegedly subsidized imports and therefore do not reach the issue of reasonable indication of threat of material injury.

[7] Commissioner Frank notes that the Statute and Legislative History require the Commission in its preliminary determinations in both antidumping and countervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination that the facts reasonably indicate that an industry in the United States could possibly be suffering material injury threat thereof, or material retardation. H.R. Rept. No. 96-317, 96th Cong., 1st Sess., p. 52 (1979).

[8] USITC investigation Nos. 731-TA-45, 46 and 47 (Preliminary); USITC Pub. No. 1175.

[9] USITC investigation No. 731-TA-26 (Final); USITC Pub. No. 1088.

electrogalvanized nails, bright nails, vinyl-coated, cement-coated, hot-galvanized, phosphate-coated and blued-nails.

There are approximately 50 U.S. firms which manufacture some or all of these seven categories of steel wire nails. It has been suggested that there are other classifications of nails which may be appropriate for purposes of defining the domestic industry or that a continuum principle [10] be applied. The continuum principle applies when the like product candidates consist of a group of products only slightly distinguishable from each other and where no clear dividing lines can be drawn based on characteristics and uses. While we do not adopt such an analysis here, we do not preclude the use of such an analysis in a final determination. No matter what approach is used, the end result in this preliminary investigation would be identical due to the limited data which we have been able to collect. When data on separate like products are unavailable, the effect of the dumped imports must be assessed in terms of the narrowest group of products for which information is available.[11] This has been the case in the two prior investigations on certain steel wire nails from Korea.[12] The narrowest group we can analyze then is the producers of one or more of the seven like products. This is, therefore, the production against which we assess the impact of allegedly subsidized imports of nails from Korea.[13]

In this preliminary determination, we find a reasonable indication of material injury or threat of material injury on a national basis. We therefore do not make a determination on a regional industry basis at this time. This does not preclude use of the regional industry analysis in the final investigation.

Reasonable Indication of Material Injury

In making a determination of whether there is a reasonable indication of material injury to the domestic industry by reason of imports of the allegedly subsidized product, we are required by statute to consider among other relevant factors the volume of imports, the impact of the imports on domestic prices, and the consequent impact on the domestic industry.[14]

Volume of Imports

The volume of steel wire nails imported from Korea into the United States has increased irregularly from 1973 through 1981. These imports increased from 1,000 short tons or less than 0.5 percent of apparent domestic consumption in 1973 to 109,000 short tons or 12 percent of consumption in 1978. The volume of imports declined, however, to 92,000 short tons in 1979 with an additional drop to 76,000 short tons in 1980. Although the absolute volume of imports declined from 1979 to 1980, imports from Korea as a percent of consumption remained stable at 11 percent as consumption declined sharply in these years. In 1981, however, the volume of imports of steel wire nails from Korea increased to 115,000 short tons, an increase of 51 percent over 1980, while U.S. consumption continued to drop. Thus, imports from Korea as a percent of U.S. consumption increased to 19 percent in 1981.

Effect of Imports on Prices.—U.S. producers have alleged that Korean nails are the price leaders in the U.S. market and that there has been "destructive" price cutting in an effort to maintain sales.[15] The information gathered in this preliminary investigation provides support for this allegation. Since the second quarter of 1979, imported steel wire nails of the one type for which data were gathered [16] have undersold the domestic product by weighted average margins ranging from 0.4 percent (July–December 1981), to 6.9 percent (January–March 1980).[17]

The margin of underselling dropped to its lowest level in almost two years in July-September of 1981, which was shortly after the intiation of the preliminary dumping investigation of *Steel Wire Nails from Japan, the Republic of Korea and Yugoslavia,* Inv. Nos. 731–TA–45, 46 and 47 (Preliminary).[18]

In addition, the price of the Korean nails has actually declined from January-March 1979 to October-December 1981. This decline occurred at a time when the trigger price index for nails increased by 10 percent and the Bureau of Labor Statistics indexed price for nails increased by 31 percent.

There is a clear indication that there are price suppressing factors at work in the market. The imported product has been underselling the domestic product in every quarter since April of 1979. The price of the domestically-produced nail increased at a slower rate than did the producer price index for nails. At the same time, the price of the Korean nails actually decreased slightly during the period for which data were collected. As pointed out in prior investigations on nails, suppliers of steel wire nails regard price as the most important competitive sales factor.[19] Although our data are not complete at this time, these preliminary indications of price suppression or depression merit further investigation.

Impact of Imports on The Domestic Industry.[20]—While the condtion of the domestic industry deteriorated from 1979–81, Korean market penetration increased from 11 percent to 19 percent during this same period. Domestic production of steel wire nails declined by 76,000 pounds or 27 percent and shipments followed a similarly declining trend. The ratio of inventories to production increased steadily throughout the period while the ratio of production to capacity declined from 52 percent in 1979 to 48 percent in 1981. The average number of employees declined from 1,946 workers in 1979 to 1,300 workers in 1981, a drop of 33 percent.

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[10] USITC investigation No. 731–TA–50 (Preliminary), USITC Pub. No. 1196 Stainless Clad Steel Plate from Japan.

[11] 19 U.S.C. 1677(4)(D) (Supp III 1980).

[12] Commissioners Frank and Eckes did not participate in these investigations.

[13] Commissioner Frank believes the Statute and Legislative History with regard to Section 771(4) of the Tariff Act of 1930 as amended by Section 101 of the Trade Agreements Act of 1979 is clear that this analytical approach, used when separate identification of relevant economic factors and other data on separate like products is not available in determining effects of subsidized or less-than-fair-value imports, is to be deployed in a careful well-reasoned fashion to satisfy the requirement of the Statute of defining the domestic industry. The Act mandates an examination of the impact of alleged unfairly traded imports on the domestic producers comprising the domestic industry. However, he recognizes the Statute and Legislative History provide for this approach to be applied to assess the impact of the imports " * * * as they relate to the *production of* the narrowest group or range of products which includes the like product and for which available data permits separate consideration." (Emphasis added.) But it is important to keep in mind this approach is part of an overall framework of criteria set forth to satisfy the requirement of defining the domestic industry. (*See* 19 U.S.C. 1677(4)(D); Report of the Senate Committee on Finance on H.R. 4537, pp. 82–84.) Commissioner Frank therefore determines that the domestic industry consists of the producers of one or more of the like products. This industry determination is consistent with that rendered by the Commission in Inv. No. 731–TA–46 and 47 (Preliminary) Certain Steel Wire Nails From the Republic of Korea and Yugoslavia (USITC Pub. 1175, Aug. 1981), and he believes such an industry determination needs to be explicitly set forth here.

[14] 19 U.S.C. 1671.

[15] Conference Feb. 12, 1982, p. 8.

[16] Of the seven categories of nails in this investigation, 16-bright penny nails are the most commonly produced by the domestic producers.

[17] Staff report p. A–26.

[18] USITC investigation Nos. 731–TA–45, 46, and 47 (Preliminary), USITC Pub. No. 1175.

[19] Report, A–25.

[20] Vice Chairman Calhoun and Commissioner Stern note that there are also several non-import related problems faced by the domestic nail industry at this time, including the decline in housing starts and over-capacity problems created by a number of new producers which have entered the market in a short period of time. *See 19 CFR 207.27.*

Furthermore, profit and loss information submitted to the Commission reveals a declining trend from 1979 to 1981. Of the 15 firms supplying profit-and-loss information, representing 96 percent of reported production in 1981, four firms reported losses in 1979, and seven in 1980. In 1981, five firms reported losses and overall gross profit for the 15 firms had declined. In addition, eight U.S. nail producing plants have closed or have filed for reorganization under Chapter 11 of the Federal Bankruptcy Act, since 1979.[21] [22]

Reasonable Indication of Threat of Material Injury

In 1981 the volume and market penetration of exports from Korea increased substantially over 1980. The volume of imports increased from 76,000 tons in 1980 to 115,000 tons in 1981 or by 52 percent. Market penetration increased from 11 percent in 1980 to 19 percent in 1981. This is an indicatio of Korea's ability to increase exports to the United States in a short period of time. Consequently, we find that there is a reasonable indication that the domestic industry is threatened with material injury.[23]

Motion To Dismiss Petition

A motion was made at the conference by counsel for the Korean Metal Industry to dismiss the petition for failure to comply with statutory and regulatory requirements. We have denied this motion because, in our view, we are without authority to rule on the sufficiency of petitions. Reliance on Commission rule 207.11 (19 CFR 207.11) in this regard is, therefore, misplaced.

Congress has given the administering authority, (Department of Commerce) not the Commission, the power to determine the sufficiency of petitions. Section 702(c) is clear on this matter:

> Within 20 days after the date on which a petition is filed under subsection (b), the *administering authority* shall—(emphasis added)
>
> (1) Determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations.

Those who believe that a petition does not present injury data reasonably available to the petitioner may request that the Commission raise the question of sufficiency of the petition with the administering authority prior to initiation by the administering authority.[24] In the past, the Commission has given advice to Commerce concerning the sufficiency of a petition. In *Latchet Hook Kits from the United Kingdom*,[25] the Commerce Department did dismiss an antidumping petition based upon such advice. However, in that case, advice from the Commission was submitted prior to initiation by the administering authority and before the expiration of the 20-day period.

Furthermore, in relying on Commission rule 207.11 as the basis for dismissal by the Commission, counsel has misinterpreted the purpose for this provision. Rule 207.11 simply establishes the responsibility of petitioners to present the kind of data the Commission uses for reaching determinations under section 701.[26] To this extent, then, the rule establishes the terms under which the Commission can assess whether petitioners have met their burden of coming forward with information reasonably available.[27]

Counsel for the Korean Metal Industry raised the question as to whether the standards of rule 207.11 are satisfied by data which are several months old and has been updated by the petitioner in only a limited fashion. We will not consider this issue because it was not raised within the 20-day deadline.

Additional Views of Commissioner Paula Stern

Causation in Countervailing Duty Cases

A very important question has been raised in this investigation as to what the Commission should look to in determining causation in countervailing duty cases. Discussion has focused on two interpretations of the phrase, "the effects of the subsidized imports":[28] (1) Judging the full impact of the subject imports, which happen to benefit from a subsidy; and (2) judging the effects of the sudsidy in causing the injury through the subject imports.

The conceptual difference between these two approaches cannot be underestimated. The first alternative would attach no weight to whether the subsidy was 0.5 percent or 50 percent. Any imports benefiting from a subsidy—no matter how insignificant—would be equally tainted for purposes of causality analysis under the first formulation. By contrast, the second formulation would require the causality analysis to trace, to whatever extent possible, the actual effects of the subsidies on the domestic industry.

The statute in section 771(7)(C)(ii) mandates that the Commission consider certain factors in "evaluating the effect of imports of such merchandise." But how these factors should be evaluated is not explicit in this phrase. I believe that the statute, the legislative history, and the relevant international agreements taken together clearly demonstrate that the second alternative is the proper basis for assessing causality in the Commission's countervailing duty investigations and is true to the intended meaning of the phrase "the effects of the subsidized imports."

A review of the drafting of the Subsidies Code contains direction on what should be used to determine causation for material injury. According to Rivers and Greenwald, two American negotiators of the Codes on the effects language,

> [t]he language finally agreed upon provided that: "[i]t must be demonstrated that subsidized imports are, through the effects of the subsidy, causing injury within the meaning of this Agreement."[29]

The Director-General of GATT in April of 1979 described the negotiations at the Tokyo Round on this same issue:

> Many participants took the firm position that * * * [t]he existence of a significant material injury must be proven and the causal link between injury and the particular subsidy established.[30]

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[21] Commissioner Frank notes that data on general, selling, and administrative expenses were not collected. Had such data been collected, it is possible that more firms would have shown losses in 1980 and 1981.

[22] Commissioner Frank notes that, although data in this regard is incomplete to draw any definitive determination, there is some indication that the domestic industry having operations in the ten-state Western Region as disclosed in the Report may be experiencing even greater economic distress, and suggests in a final investigation, should one be conducted, more data be obtained both on imports and domestic industry and related economic factors pertinent to this region. This in no way obviates his determinations in the present preliminary investigation on a national industry basis, nor does he believe necessarily a regional analysis approach is mandatory in a final investigation; rather, he believes such data in a final investigation may be helpful to the Commission in its deliberations in the context of whatever industry approach is deemed to be appropriate at that time.

[24] 19 U.S.C. 1671(a).

[25] F.R. Vo. 45, No. 239, Dec. 10, 1980.

[26] Rule 207.11 incorporates by reference from rule 207.26 an illustrative list of facts on which reasonably available data shall be submitted to facilitate the Commission's assessment of existence of a "reasonable indication of material injury."

[27] Senate Committee on Finance, Trade Agreements Act of 1979, S. Rept. No. 96–249, 96th Cong. 1st. Sess. 1979, p. 66; House Committee on Finance, Trade Agreements Act of 1979, H.R. No. 96–153, 96th Cong. 1st. Sess. 1979, p. 60; Inv. No. 731–TA–04, Countertop Micro-Wave Ovens from Japan, p. 5.

[28] *E. g.*, section 771(4)(D) uses this phrase.

[29] Richard Rivers and John Greenwald, The Negotiation of a Code on Subsidies and Countervailing Measures: Bridging Fundamental Policy Differences, 11 L. & Pol'y Int'l Bus. 1447, 1457, (1979).

[30] Director-General of GATT, the Tokyo Round of Multilateral Trade Negotiations 59. *See also* U.S. Office of Special Trade Representative, Background Papers on MTN, Subsidies and Countervailing Duties (May 2, 1979).

Most importantly, the Senate Finance Committee's "Report on the Trade Agreements Act" directs the Commission to continue to look to the effects of the net subsidy in its determinations:

> In determining whether injury is "by reason of" subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to the investigation, and *how the effects of the net bounty or grant relate to the injury*, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill. (Emphasis added) [31]

The "by reason of imports" language of the Trade Agreements Act [32] tracks similar language in the Antidumping Act, 1921. The Commission's longstanding practice under the 1921 Act was to link the dumping margin to the injury. This precedent was repeated in the first countervailing duty investigation conducted by the Commission under section 303(b) of the Tariff Act.[33] When the net subsidy accounted for only a small portion of the margin of underselling, the Commission reasoned in general that the injury could not be remedied by a countervailing duty and found in the negative.

In preliminary investigations the Commission is usually unable to assess precisely the effects of the subsidy because at this stage the exact subsidy margin is unknown.[34] Thus, in judging causation in a preliminary case, the focus is of necessity on the subject imports without substantial analysis of the alleged subsidy.[35] If this case returns for a final investigation, the Commission will have the benefit of the final subsidy margin from Commerce and, as usual, I will take another look at causation.[36]

Additional Views of Vice Chairman Michael J. Calhoun

In her additional views, Commissioner Stern raises an issue which has rather significant implications for the way in which we reach our determinations under Title VII of the Trade Agreements Act of 1979. It is my view that this issue was not pertinent to our findings in this investigation and need not necessarily be relevant in reaching a determination in the final investigation. However, since the issue has been aired and to the extent Commissioner Stern suggests that Title VII requires us in each case to establish a causal relationship between the actual subsidy (or the LTFV margin in dumping cases for that matter) and material injury, I wish to offer an additional perspective.

As a matter of policy underlying the discharge of our responsibilities in countervailing duty and antidumping cases, the notion that Title VII requires us to trace a specific subsidy (or LTFV margin) through to a particular quantum of harm, though posing practical difficulties, has a certain appeal. If the impact of Title VII is to remedy harm associated with specific subsidized products (or products sold at LTFV) it is certainly sound to expect that a finding resulting in the imposition of remedy for that behavior ought to be based upon a showing that such behavior actually caused the requisite measure of harm. In this regard, provisions in the GATT Code and in the literature related to it may well establish that the relevant Code provisions are premised on this policy.

The merits of this policy notwithstanding, the problem for me is that the plain language of Title VII is unambiguous in requiring of us a somewhat different approach than that alluded to by Commissioner Stern. Section 701(a), providing for the general rule under which countervailing duties shall be imposed, establishes that the ITC shall determine whether a domestic industry is materially injured, threatened with material injury, or whether the establishment of a domestic industry is materially retarded "by reason of *imports of that merchandise*". Section 703(a), providing for preliminary determinations, establishes that we shall find material injury, etc., "by reason of *imports of the merchandise* which is the subject of the investigation * * *" Section 705(b), providing for final determinations, establishes that material injury must be caused "by reason of *imports of merchandise* with respect to which the administering authority has made an affirmative determination * * *" Provisions relating to dumping investigations, in relevant part, use identical language.

In each of these directory provisions, statutory language does not compel us to establish a nexus between material injury and the subsidy (or LTFV margin) found by Commerce. Nor is the statute unclear in what it does require. Rather, in each provision the language plainly directs that the appropriate causal relationship is between harm and the *imports* which are under investigation. Moreover, section 771(7), which details the factors we are to consider in reaching a determination on the question of material injury establishes a nexus standard which is completly consistent. In each of the subparagraphs addressing the specific factors for us to consider, the language, without fail, directs us to relate the effect of the enumerated factors to "imports of merchandise."

It has alway been my understanding that where the language of the statute is plain and unambiguous of its face, reference to interpretative aids is inappropriate. Thus, neither the writings of former GATT negotiators and officials nor language in the legislative history are appropriate sources for attributing meaning to words used in the statute which are not confusing. Furthermore, there is no mandate that Title VII has to be consistent with the GATT Code. In this connection, section 3(a) of the Trade Agreements Act of 1979 specifically provides that provisions of trade agreements which conflict with any statute of the United States shall not be given effect.

In addition, even though irrelevant because there is no statutory ambiguity, the Senate Report language relied upon by Commissioner Stern is not the least bit compelling as support for what I understand to be her construction of the statute. That language simply observes that in determining causality we consider, among other enumerated and unenumerated factors, how the effect on the subsidy (or LTFV margin) relates to the injury. Nothing in this report or the House report declares or suggests that a determination of material injury ought to be based upon a tracing of specific

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[31] Senate Comm. on Finance, Trade Agreements Act of 1979, S. Rept. No. 96-249, 96th Cong., 1st Sess. (1979) (hereinafter cited as Senate Report).

[32] 19 U.S.C. 1671(b).

[33] Certain Zoris from the Republic of China (Taiwan), Inv. No. 303-TA-1, USITC Pub. No. 787 (1976).

[34] The only available information on margins usually consists of allegations by the petitioner.

[35] In Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701-TA-85 (Preliminary), USITC Pub. No. 1206, January 1982, I did analyze subsidy information in coming to the conclusion that "[t]here is no reasonable basis for denying the potential impact such subsidies could be having * * *" However, that case was initiated by Commerce, which is responsible for determining the extent of subsidies. The information provided by Commerce was a good deal more substantial than allegations by an interested party. *See* "Views of Commissioner Paula Stern," at 27.

[36] There is a dumping investigation (731-TA-46) underway on the same products that we are considering in this investigation. If Commerce finds a preliminary subsidy margin, bond would be posted. However, there would be no adjustment of the dumping margin. If a final subsidy is found, an adjustment of the dumping margin will be made by Customs as directed by the Department of Commerce. Thus, there are potential problems in the bonding process over which the Commission has little control.

subsidies (or LTFV margins) through to a specific quantum of injury.

The Senate language relied upon simply recognizes the obvious, that in establishing a nexus between material harm and subsidized imports the strongest case for causality arises when the effect of a subsidy can, in fact, be tied to a measure of harm. Because causality is so strongly established in such a circumstance, it is not surprising that the Senate language would observe with approval that such a nexus has been considered by us in the past. To be sure, in establishing causality the relation between a particular proscribed practice and material harm ought to be a consideration of the first order. But an observation by one branch of Congress that we do consider this matter in our assessment of causality is a far cry from establishing that the intent of the Congress is that a material injury determination shall rely upon such a tracing. Further, it should not go unnoted that the cited Senate language also observes, at the very outset, that in establishing "by reason of" the ITC looks at "the effect of such *imports* * * *"

There is a sound and unoffensive reason for the statutory scheme under Title VII expressly requiring only that imports and not subsidy (or LTFV margin) be the cause of material injury. First, Title VII is not punitive, it is a limited remedy statute. Under the scheme, the amount of the advantage enjoyed by the imports is offset by a corresponding duty. Imports are still permitted full access to the U.S. market. It would seem somewhat self-defeating to make this rather restrained remedy contingent upon a detailed tracking of these sometimes narrow practices through the complexities of the manufacturing, pricing and marketing patterns of foreign producers to an impact in the U.S. market. In light of the statutory detail under section 771, if such a substantial investigative undertaking were intended to be the cornerstone of causality under Title VII, certainly Congress would have been equally explicit in delineating the standards for applying it.

Second, the system provided for in the language of the statute affords a rather simple remedial format. Once imports are found to enjoy a subsidy (or LTFV margin) and we determine whether their presence is materially injuring a domestic industry, just the extent of their proscribed advantage is offset. By permitting us to relate the impact of the imports rather than trace the specific advantage they enjoy to a measure of harm, Congress has obviated the need in every case for close and detailed analysis of the nature and operation of a specific foreign practice and for following its effects through the marketplace. Avoiding such an investigation is a major simplification that goes not just to administrative ease, but also implicates the extent to which the domestic industry has a greater or lesser chance of receiving remedy.

With regard to the administrative ease of the statutory format as provided in the language, Congress must have recognized the unavoidable difficulties attending an effort to relate a specific foreign subsidy to a specific domestic harm. Relating harm to the imports presents a more manageable task. Under the alternative scheme, at the minimum, either Commerce or we would have to investigate the financial, manufacturing and management practices of foreign companies in order to determine how the subsidy is used so we can determine its impact in the U.S. market. To simplify the task it would be tempting, for example, to assume that a subsidy will usually reveal itself in pricing practices and, therefore, we should assess the impact by examining the effect of price on the market.

Such an approach, however, is simplistic, if not naive. Subsidies may be used in numerous ways that have little or no easily discernible relationship to price in the market. Such uses include imporvement in manufacturing technology, increased return to shareholders, more aggressive advertising, higher salaries, accelerated debt retirement, and greater allocations to research and development. How are we to quantify their impact on the U.S. industry? Why is there no Congressional guidance on such an important matter if Commissioner Stern's construction were intended? Title VII and the legislative history do provide great detail on similar complicated but important aspects of this legislation.

It needs little more than to observe that, currently, Commerce does not normally apprise us of how subsidies are employed by individual companies nor do we attempt such factfinding. Nevertheless, factfinding by both agencies can be formidable. From the difficulties that arise in simply establishing the fact of a subsidy and the fact of material injury, it should be apparent that the task of discovering how a subsidy is exploited by a foreign company can be substantial, a fact we cannot assume Congress did not appreciate in drafting the statute as it did.

Regarding the impact of the statute's relative simplicity on the outcome of investigations, as the statute is now, the Commission's task is not further complicated by doing this kind of analysis. Thus, the ability of an industry to obtain redress in not obstructed by significant factfinding barriers. However, relying on the establishment of a nexus between subsidy and harm makes needed, though limited, redress for demonstrated harm unnecessarily burdensome. It is axiomatic that the greater the difficulty of establishing relevant fact, the lower the likelihood of rendering remedy. The scheme as provided in the language of Title VII quite clearly carries less difficulty in establishing nexus than does Commissioner Stern's approach. This difference in level of difficulty grows not from a policy preference, rather it is simply a function of the relevant facts being more difficult to collect. Even the most narrow reading of the origins of the 1979 Act and the legislation transferring countervailing duty and antidumping responsibilities from the Treasury Department to the Commerce Depertment must acknowledge that the Congressional interest here is in advancing rather than reducing the predictability of remedy to domestic industries confronted with the injurious behavior of subsidies (or LTFV imports).

As a final matter, Commissioner Stern accurately observes that preliminary cases are not likely to afford us sufficient information to relate material injury to subsidy practices. This results in there being different standards, *de facto*, for finding material injury in preliminary and final cases. Nothing in the statute or in any of the accompanying literature seems to anticipate such a double standard. While we are to reach preliminary decisions on the basis of the best information available, we are expected to apply the same standards in all investigations whether they may be preliminary or final. If the basis of causality is to be the effect of the subsidy and it is predictable that information on how the subsidy is used is unlikely to be available, the decisionmaking that occurs results in a decision based upon a completely different standard of causality. A finding of material injury in such a circumstance is based upon a theory other than tracing the effect of the subsidy or upon assumption. The statute simply cannot be read to permit preliminary decisionmaking using a standard different from that required in final cases or based upon conjecture.

It is, therefore, my belief that for sound policy reasons, the language of Title VII means exactly what it says. In

order for countervailing duty or antidumping duties to issue, material injury must be found to be caused by the imports in question not by the operation of the subsidy (or the LTFV margin). Any other reading of the statute distorts its plain language though it may well be based upon very sound policy.

Issued: March 5, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-7080 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-9]

Michelin X-Radial Steel Belted Tires From Canada

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty investigation.

SUMMARY: On January 8, 1973 in T.D. 73-10, the Department of the Treasury (Treasury) imposed countervailing duties, under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), on Michelin X-radial steel belted tires from Canada. Imports of X-radial steel belted tires from Canada are currently provided for under item 772.51 of the Tariff Schedules of the United States.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 became effective, and on January 2, 1980, the authority for administering the countervailing duty statute was transferred from Treasury to the Department of Commerce (Commerce). On May 13, 1980, Commerce published a notice in the **Federal Register** (44 FR 31455) of intent to conduct an annual administrative review of all outstanding countervailing duty orders.

On January 2, 1980, the International Trade Commission received a request from Michelin Tire Corporation for an investigation under section 104(b)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 1971 note), with respect to X-radial steel belted tires from Canada. In accordance with section 104(b)(3) of the act, the Commission notified the Department of Commerce of its receipt of the request for this investigation.

As required by section 751(a)(1) of the Tariff Act of 1930, Commerce has conducted its first annual administrative review of the countervailing duty order on Michelin X-radial steel belted tires from Canada. As a result, on October 2, 1981, Commerce published in the **Federal Register** (46 FR 48737), its final determination that there were net subsidies of 2.91 and 1.60 percent ad valorem for 1978 and 1979 respectively, on Michelin X-radial steel belted tires from Canada. The review covers the period January 1, 1978 through December 31, 1979. In addition, the Department of Commerce will be publishing shortly its preliminary (administrative review) determination for the period of January 1, 1980 on through December 31, 1980. Pursuant to section 104(b)(2) of the Trade Agreements Act, the U.S. International Trade Commission is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of Michelin X-radial steel belted tires from Canada provided for under item 772.51 of the Tariff Schedules of the United States, covered by the countervailing duty order, if the order were to be revoked. The investigation will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly Subpart B thereof.

EFFECTIVE DATE: March 11, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William Schechter, U.S. International Trade Commission, Washington, D.C. 20436 (202-523-0300).

SUPPLEMENTARY INFORMATION:

Public Hearing

The Commission will hold a public hearing in connection with this investigation on May 13, 1982, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington D.C. 20436, beginning at 10 a.m. Requests to appear at the hearing should be filed with the Office of the Secretary, U.S. International Trade Commission, Washington, D.C. 20436, not later than the close of business (5:15 p.m.) on April 27, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10 a.m., on April 30, 1982, in room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed with the Commission on or before May 10, 1982.

A staff report containing preliminary findings of fact in this investigation will be available to all interested parties on April 29, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules of Practice and Procedure (47 FR 6191, February 10, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. Not more than five doubled-spaced pages of supplementary material, other than remarks read into the record, will be accepted for the record at the hearing. Supplementary material is defined in § 207.13(f) (47 FR 6189, February 10, 1982). All legal arguments, economic analysis, and factural materials relevant to the public hearing should be included in prehearing briefs in accordance with rule 207.22 (47 FR 6191, February 10, 1982). Posthearing briefs shoud be filed with the Commission by no later than the close of business, May 25, 1982.

Written submission.—Any person may submit to the Commission on or before May 25, 1982, written statements of information pertinent to the subject matter of the investigation. A signed original and fourteen true copies of such statements must be submitted in accordance with § 201.8(d) of the Commission's Rules of Practice and Procedure (47 FR 6188, February 10, 1982). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submissions must conform with the requirements of § 201.6 of the Rules of Practice and Procedure (19 CFR 201.6), and the filing requirements of § 201.7(d) of the Rules (47 FR 6188, February 10, 1982).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (47 FR 6190, February 10, 1982), and part 201, subparts A through E (19 CFR 201 (1981) as amended by 47 FR 6190, February 10, 1982).

This notice is published pursuant to § 207.20 of the Commission's Rules of Practice and Procedure (47 FR 6190, February 10, 1982).

By order of the Commission.

Issued: March 11, 1982

Kenneth R. Mason,

Secretary.

[FR Doc. 82-7079 Filed 3-15-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-152 and 153 (Preliminary) and Investigation No. 731-TA-89 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Brazil, France, and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and an antidumping investigation and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-152 and 153 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and France of wire strand of steel for prestressing concrete, provided for in item 642.11 of the Tariff Schedules of the United States (TSUS) (1982), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigation No. 731-TA-89 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with materially injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of wire strand of steel for prestressing concrete, provided for in item 642.11 of the TSUS, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: March 4, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Abigail Eltzroth, Office of Investigations, International Trade Commission; telephone 202-523-0289.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted following receipt of petitions filed by counsel for American Spring Wire Corp., Armco Inc., Bethlehem Steel Corp., Florida Wire & Cable Co., Pan American Ropes, Inc., and Shinko Wire America, Inc. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petitions, or by April 19, 1982 (19 CFR 207.17). These investigations will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission on or before March 29, 1982, a written statement of information pertinent to the subject matter of these investigations. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on March 25, 1982 at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the investigator for the investigation, Ms. Abigail Eltzroth, telephone 202-523-0289, not later than March 18, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207), and part 201, subparts A through E (19 CFR 201). Further information concerning the conduct of the conference will be provided by Ms. Eltzroth.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

By order of the Commission.

Issued: March 9, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-7062 Filed 3-15-82: 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 1, 1982–March 5, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,647; Young Timers, Inc., New York, NY
TA-W-12,197; Christenson Brothers Shake, Inc., Mt. Vernon, WA
TA-W-12,048; Advent Corp., Cambridge, MA
TA-W-12,049; Advent Corp., Nogales, AZ
TA-W-12,050; Advent Corp., Orange, CA
TA-W-12,051; Advent Corp., Portsmouth, NH
TA-W-12,052; Advent Corp., Clinton, MA
TA-W-11,569; Brown Shoe Co., Piggott, AR
TA-W-12,177; Electromech, Inc., Hoboken, NJ
TA-W-12,476; P.D.A. Coat Corp., New Jersey, NJ
TA-W-11,750; Butler Furniture Industries, Inc., Carrollton, KY
TA-W-11,924; Standard Plastic Products, Inc., South Plainfield, NJ
TA-W-11,925; Standard Plastic, Inc., Edison, NJ
TA-W-11,707; General Electric Co., Pitney Glass Plant, Cleveland, OH
TA-W-12,167; Garrison Stove Works, Inc., Claremont, NH
TA-W-12,475; Michael Coat, Inc., Jersey City, NJ

TA-W-12,473; Grace Coat Co., Hoboken, NJ
TA-W-11,237; The Florsheim Shoe Co., Mexico, MO
TA-W-12,279; Sensors, Inc., a Div. of Dekalb Agresearch, Inc., Ann Arbor, MI
TA-W-12,316; Talon, Inc. (Formerly Textron, Inc., Talon Div.), Meadville, PA
TA-W-12,234; Q and T Coat Corp., Paterson, NJ
TA-W-12,685; Libbey-Owens-Ford Co., Lathrop, CA
TA-W-12,615; Sue Brett, Inc., New York, NY
TA-W-12,340; Essex Group, Inc., Power Conductor Div., Marion, IN

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,792; Advanced Technology & Testing, Livonia, MI

In each of the following cases the investigation revealed that criterion (3) has not been met for the reason(s) specified.

TA-W-12,407; Fairview Tubular Products, Inc., Fairview, MI

Aggregate U.S. imports of brake lines and fuel lines did not increase as required for certification

TA-W-12,409; Proto Tube, Inc., Luzerne, MI

Aggregate U.S. imports of brake lines and fuel lines did not increase as required for certification.

TA-W-12,712; The Upson Co., Lockport, NY

Aggregate U.S. imports of wall board are negligible.

TA-W-12,632; Bird & Son, Inc., Rumford, RI

Aggregate U.S. imports of roofing products did not increase as required for certification.

TA-W-13,085; Bird & Son, Inc., Perth Amboy, NJ

Aggregate U.S. imports of roofing products did not increase as required for certification.

Affirmative Determinations

TA-W-12,810; U.S. Steel Corp., USS Fabrication Div., Shiffler Plant, Pittsburgh, PA

The investigation revealed that all criteria have been met. All workers separated on or after September 1, 1980 are certified eligible to apply for adjustment assistance.

TA-W-11,191; Munsingwear, Inc., Eastland, TX

A certification was issued in response to a petition received on September 29, 1980 covering all workers separated on or after September 24, 1979.

I hereby certify that the aforementioned determinations were issued during the period March 1-5, 1982. Copies of these determinations are available for inspection in Room 10332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 9, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-7090 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-4-C]

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, Room 1871, Martin Tower, Bethlehem, Pennsylvania 18016, has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Mine No. 31 (I.D. No. 46-01268) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that preshift examptions of the approaches to the abandoned areas of 1, 2, 3, 4, 5, 6, 7, and 8 Right Off East Mains be made by a certified person within three hours immediately preceding the beginning of any shift.

2. The roof in this area has become hazardous for travel due to weathering of the slate roof, and many roof falls have also occurred which make certain areas impassable. The approaches cannot be rehabilitated without many years of extremely hazardous work.

3. There are three evacuation stations which have been established at 8 Right. These stations are not being examined and will continue to be examined as required, including preshift requirements. The evaluation stations have been located in areas where they can effectively monitor the quality of the air that has passed by the approaches in question.

4. As an alternative method, petitioner proposes to establish and maintain specified safe monitoring stations at which examinations for air quality can be conducted, as well as for compliance with mandatory health or safety standards. Tests for air quality and air readings will be made at these stations on a preshift basis as required. The location of the stations and the preshift examinations conducted at such stations will insure that proper air quality will be maintained. A date board or book will be located at the measuring stations, and the air quality will be measured and recorded showing the certified person's initials, date and time. Comparisons will be made with previously posted readings. Any decrease in air quality, or a marked variation in air quality will warrant immediate action to determine the cause, and appropriate action will be taken as required. In addition to the underground readings, the daily reading will also be posted in a record book kept on the surface for this purpose and will be made available to all interested persons.

5. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 1982. Copies of the petition are available for inspection at that address.

Dated: March 5, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7091 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-1-C]

Big J Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Big J Coal Company, Inc., Pathfork, Kentucky 40863, has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 24 Mine (I.D. No. 15-08801) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's shuttle cars.

2. The overall mining height ranges from 41 to 57 inches with rolls and undulations in the coal seam.

3. Petitioner states that installation of cabs or canopies on the shuttle cars would result in a diminution of safety for the miners affected because the canopies could strike and dislodge the roof support system. Canopies also cause a very cramped operator compartment, forcing the operator to lean out from the canopy, exposing certain body parts to potential injury. This cramped operator compartment also causes operator fatigue, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington,Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 1982. Copies of the petition are available for inspection at that address.

Dated: March 5, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7092 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-1-M]

Martin Marietta Alumina; Petition for Modification of Application of Mandatory Safety Standard

Martin Marietta Alumina, P.O. Box 165, Kingshill Post Office, St. Croix, Virgin Islands 00850, has filed a petition to modify the application of 30 CFR 55.12-68 (transformer enclosures) to its Martin Marietta Operation (I.D. No. 55-00005) located in Estate Anguilla, St. Croix, Virgin Islands. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that transformer enclosures be kept locked against unauthorized entry.

2. The existing plant transformers are industrial type units designed and described as totally enclosed. The transformer bushings and stubs are totally enclosed in metal ducts. The metal ducts which enclose the high voltage bushings and the low voltage stubs serve as a barrier to contact with energized parts making these parts inaccessible to unauthorized entry. The transformer by design is equipped with its own enclosure such that the necessity for locks is not applicable.

3. Petitioner believes that the facts stated above are an adequate basis for a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 1982. Copies of the petition are available for inspection at that address.

Dated: March 5, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc 82-7093 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-3-C]

North American Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

North American Coal Corporation, Powhatan Point, Ohio 43942, has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quantity and location of fire-fighting equipment) to the following mines:

a. Powhatan No. 1 (I.D. No. 33-00938); Powhatan No. 3 (I.D. No. 33-00939); Powhatan No. 5 (I.D. No. 33-00937); and Powhatan No. 6 (I.D. No. 33-01159), all located in Belmont County, Ohio and

b. Powhatan No. 4 (I.D. No. 33-01157) and Powhatan No. 7 (I.D. No. 33-02624), both located in Monroe County, Ohio.

The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that one portable fire extinguisher and 240 pounds of rock dust be provided at each temporary electrical installation.

2. As an alternative method, petitioner proposes to provide two portable fire extinguishers or one extinguisher having at least twice the minimum capacity.

3. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 1982. Copies of the petition are available for inspection at that address.

Dated: March 5, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7094 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-163-C]

T.A.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

T.A.G. Coal Company, 836 West Spruce Street, Shamokin, Pennsylvania 17872, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Slope No. 11 Mine located in Shamokin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternative method, petitioner proposes that:

a. The minimum quantityof air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any

pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

8. Petitioner states that the alternative method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 1982. Copies of the petition are available for inspection at that address.

Dated: March 5, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7095 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health will meet in Washington, D.C. on March 31, April 1 and April 2, 1982. The meeting will begin at 9:00 a.m. on Wednesday, March 31 in room N-5437 of the Frances Perkins Department of Labor Building, Third Street and Constitution Avenue N.W., Washington, D.C. The public is invited to attend.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The agenda will include updates on OSHA activities; updates on the activities of the National Institute for Occupational Safety and Health; reports on and discussions of matters pertaining to OSHA standards and OSHA state program activities.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting dates, preferably with 20 copies, will be presented to the Committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Chairman of the Committee to the extent which time permits.

For additional information contact Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3635, Third Street and Constitution Avenue, NW., Washington, D.C. 20210, Telephone 202-523-8024.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. this 9th day of March 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-7096 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Subpanel on Metabolic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel on Metabolic Biology of the Advisory Panel for Physiology, Cellular and Molecular Biology

Date and time: April 1, 1982 (9:00 am to 6:00 pm); April 2, 1982 (9:00 am to 6:00 pm); April 3, 1982 (9:00 am until finished)

Place: Conference Room 523, National Science Foundation; 1800 G Street, NW; Washington, D.C. 20550

Type of meeting: Closed

Contact person: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology, Room 325, National Science Foundation, Washington, D.C. 20550, 202/357-7987

Purpose of subcommittee: To provide advice and recommendations concerning support for research in metabolic biology

Agenda: To review research proposals and advise the program staff as part of the selection process for awards

Reason for: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act

Authority to close meeting: This determination was made by the Committee Management officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979

M. Rebecca Winkler,

Committee Management Coordinator.

March 11, 1982.

[FR Doc. 82-7016 Filed 3-15-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Nuclear Safety Research Program; Meeting

The ACRS Subcommittee on the Nuclear Safety Research Program will hold a meeting on March 31, 1982, in Room 1167 at 1717 H Street NW., Washington, DC. The Subcommittee will continue its discussion of the proposed NRC long range research plan for FY 1984 through FY 1988. Notice of this meeting was published Feb. 17.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (45 FR 47903), 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, March 31, 1982—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 regarding this matter.

Further information regarding 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 Designated Federal Employee, Mr. Sam Duraiswamy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 9, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-7065 Filed 3-15-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Facility Operating License No. DPR-6, issued to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Michigan. The amendment is effective as of its date of issuance.

The amendment approves Technical Specification changes which pertain to (1) degraded grid protection for Class 1E power systems and (2) the scram discharge system.

The applications for the amendment comply 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 this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this 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 this amendment.

For further details with respect to this action, see (1) the applications for amendment dated October 3, 1980, and October 27, 1981, (2) Amendment No. 51 to License No. DPR-6, 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 NW., Washington, D.C. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. 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 8th day of March, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 82-7063 Filed 3-15-82; 8:45 am]

BILLING CODE 7590-01-M

State of Washington; Discontinuance of Certain Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with state of Washington.

SUMMARY: Notice is hereby given that on January 7, 1982, the Honarable Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission, and that on February 19, 1982, the Honorable John Spellman, Governor of the State of Washington, signed an Amendment to the existing section 274b. Agreement between NRC and the State of Washington pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. The amendment permits the State to continue to regulate byproduct material as defined in section 11e.(2) of the Act (uranium mill tailings) in conformance with the requirements of section 274o. of the Act.

The proposed Amendment to the existing section 274b. Agreement was published in the Federal Register for public comment for four consecutive weeks beginning September 17, 1981 (46 FR 46241-46245). A minor change to the introductory text was made to conform the Amendment to the requirements of the "Stratton-Schmitt" amendment (Pub. L. 97-88). The amended agreement was modified to delete the following paragraph:

"Whereas, it is necessary to enter into this amendment in order to implement new requirements of section 274 of the Act which become fully effective on November 8, 1981; and".

Public Law 97-88 makes it clear that such an amended agreement is not "necessary" for the State to continue to regulate uranium mill tailings after November 8, 1981. The following was inserted in its place:

"Whereas, the Governor of the State has requested this amendment in accordance with section 274 of the Act; and".

The Amendment is published in accordance with the requirements of Pub. L. 86-373. A copy of the consolidated version of the Agreement is available at the Office of State Programs.

FOR FURTHER INFORMATION CONTACT: Craig Z. Gordon, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone: (301) 492-9886.

SUPPLEMENTARY INFORMATION:

Amendment to Agreement Between the United States Nuclear Regulatory Commission and the State of Washington for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Atomic Energy Commission [1] (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of December 6, 1966) with the State of Washington under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on December 31, 1966 and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduce materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State has requested this amendment on accordance with section 274 of the Act; and

Whereas, the Commission found on January 7, 1982, that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

---

[1] Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are now carried out by the Nuclear Regulatory Commission as of January 19, 1975.

Section 1. Article I of the Agreement of December 6, 1966, is amended by adding "as defined in section 11e.(1) of the Act;" after the words "byproduct materials" in paragraph A., by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in section 11e.(2) of the Act;".

Section 2. Article II of the Agreement of December 6, 1966, is amended by inserting "A." before the words "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b. of this Article;

"d. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

"e. The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.".

Section 3. Article III of the Agreement of December 6, 1966, is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

Section 4. Article VII of the Agreement of December 6, 1966, is amended by inserting "all or part of" after the words "terminate or suspend," by inserting "(1)" after the words "finds that," and by adding at the end before the period the following: ", or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with the provisions of section 274 of the Act.".

Section 5. Article VIII of the Agreement of December 6, 1966, is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

"In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance or maintenance of such material.

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site.".

This amendment shall become effective on February 19, 1982.

Done at Olympia, State of Washington, in triplicate, this 19th day of February 1982.

For the State of Washington.

John Spellman,

Governor.

Done at Washington, District of Columbia, in triplicate, this 7th day of January 1982.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 9th day of March 1982.

For the United States Nuclear Regulatory Commission.

Donald A. Nussbaumer,

Acting Director, Office of State Programs.

[FR Doc. 82-7064 Filed 3-15-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Nos. 301-27-31]

Hearing

Upon request of the petitioner a public hearing has been scheduled for April 14, 1982 to consider the issues raised in the petition with respect to the allegations concerning Austria, France, Italy, Sweden and the United Kingdom. The hearing is to be held at the New Executive Office Building, Room 2010, beginning at 10:00 a.m.

Requests to present oral testimony and accompanying briefs must be received on or before April 8, 1982 and should be addressed to the Chairman of the section 301 Committee. Written briefs from those persons not wishing to present oral testimony should be received on or before April 14, 1982. Requests to present oral testimony as well as written submissions should conform to the requirements set forth in 15 CFR 2006.8 and 2006.9.

In order to assure parties an opportunity to contest information provided by other interested parties in the written briefs and oral testimony,

rebuttal briefs may be filed by any party no later than April 30, 1982.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 82-7029 Filed 3-15-82; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

Mailmen, Inc. and Doubleday Publishing Co.; Visits

March 11, 1982.

Notice is hereby given that Commissioners Bright, Crutcher, and Folsom, and one staff person will visit the facilities of Mailmen, Inc., in Hauppauge, Long Island, New York, and Doubleday Publishing Company in Garden City, L.I., N.Y., Friday, March 19, 1982, for the purpose of acquiring general knowledge of third-class mailing and publishing operations.

A report of the visits will be on file in the Commission's docket room.

David F. Harris,

Secretary.

[FR Doc. 82-7053 Filed 3-15-82; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 18557; SR-AMEX-81-25]

American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Thereto

March 10, 1982.

The American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006, submitted on January 7, 1982, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, relating to the establishment of a plan for issuing fixed income security options trading permits. On February 26, 1982, the Exchange submitted an amendment to that filing which reflected that its membership had approved the proposed plan.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change and amendment thereto on or before April 6, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-81-25.

Copies of the proposed rule change and amendment thereto all subsequent amendments, all written statements with respect to the submissions which are filed with the Commission and all written communications relating to the filings between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filings and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds good cause for approving the proposed rule change and amendment thereto prior to the thirtieth day after the date of publication of notice of filing of the amendment, in that notice of the proposed rule change previously had been published for comment over thirty days ago.[1] No comments on the proposed rule change were received. The amendment was needed only to reflect exchange membership approval of the proposed plan. Accordingly, additional notice and further opportunity for public comment is unnecessary.

The Commission finds that the proposed rule change and amendment thereto are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change and amendment thereto referenced above be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-7028 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12283; 812-5048]

AAA U.S. Government Money Market Account, Inc.; Filing of Application

March 9, 1982.

Notice is hereby given that AAA U.S. Government Money Market Account, Inc. ("Applicant"), 3102 Farnam Street, Omaha, Nebraska 68131, registered under the Investment Company Act of 1940 ("Act") as an open-end, management investment company, filed an application on December 17, 1981, requesting an order of the Commission, pursuant to section 6(c) of the Act exempting the Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a Nebraska corporation on September 18, 1981, and registered under the Act on December 17, 1981. Applicant further states that its investment adviser is Mutual of Omaha Fund Management Company. Applicant represents that its investment objective is to seek as high a level of current income as is consistent with preservation of capital and maintenance of liquidity by investing in a variety of United States Government securities maturing in one year or less. According to the application, Applicant will invest in debt securities issued by the United States Treasury or guaranteed by the United States Government or its agencies, authorities or instrumentalities. In addition, Applicant may enter into repurchase agreements with respect to United States Government securities, reverse repurchase agreements and participation interests in United States Gorvernment securities. Applicant further states that it may purchase certificates of deposit provided they are fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

As here pertinent, section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c-1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a-4 provides, as here relevant, that the current net asset value of a redeemable security issued by a register

[1] *See* Securities Exchange Act Release No. 18415 (January 12, 1982).

investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit it to value its portfolio securities using the amortized cost method of valuation. In support of its request, Applicant represents that its board of directors has determined that, absent unusual circumstances, amortized cost value represents fair value of its portfolio securities and that the amortized cost method of valuation will benefit both the Applicant and its shareholders. Applicant states that by using the amortized cost method of valuing its shares, investors would have the convenience of being able to value their holdings simply by knowing the number of shares which they own. Furthermore, Applicant states that by using the amortized cost method of valuation its net asset value per share would not vary as a result of realized and unrealized capital gains and losses.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, 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 of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that its application meets the standards of section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) in the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by it.

(c) Where the board of directors believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determines by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than April 5, 1982, 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 reason 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

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity in 120 days or less as soon as reasonably practicable.

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 Applicant 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 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. 82-7024 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12287; 812-5082]

First Investors Tax Exempt Fund, Inc.; Filing of Application

March 10, 1982.

Notice is hereby given that First Investors Tax Exempt Fund, Inc. ("Applicant"), 120 Wall Street, New York, New York 10005, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on January 15, 1982, for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 22(d) of the Act to the extent necessary to permit the sale of shares of Applicant at a reduced sales charge to participants in a reinvestment program to be offered to unitholders of California Quality Tax Exempt Trust Series 1 and Subsequent Series ("Trusts"), registered under the Act as a unit investment trust. All interested persons are referred to the application on file with the Commission for statement of the representations contained therein, which are summarized below.

Applicant states that its investment objective is to provide a high level of tax exempt income by investing in a managed portfolio of debt obligations, the interest on which is exempt from federal income tax, and the principal and interest payments on which are insured by an independent insurance company. First Investors Management Company, Inc. ("Adviser") is the investment adviser of the Applicant. Applicant states that the Trusts are sponsored by Van Kampen Filkin & Merritt Inc., a broker-dealer registered under the Securities and Exchange Act of 1934, and the Trustee of the Trusts is Bradford Trust Company. According to the application, the Trusts seek to obtain income which is exempt from federal income taxation and from state and local taxes when held by California residents, and to conserve capital through investment by each series of the Trusts in interest bearing obligations which, in the opinion of bond counsel, are exempt from federal income taxes and from state and local income taxes.

Applicant states that its shares are offered for sale to the public at net asset value plus a sales charge which varies from 7.25% to 1.25% of the offering price based upon the amount invested. The minimum initial investment in Applicant is $2,000 and subsequent investments must be made in amounts of $500 or more. Shareholders of Applicant may reinvest dividends declared on shares of Applicant at the net asset value in effect at the close of business on the dividend reinvestment date.

Applicant proposes to permit unitholders of the Trusts to reinvest their distributions of interest, capital gains and principal on units of the Trusts in shares of the Applicant at net asset value plus a sales charge of 0.4%, a purchase price which is less than the current public offering price described in Applicant's prospectus, without regard to Applicant's minimum initial investment requirements. The application states that all unitholders of the Trusts will be eligible to participate in the reinvestment programs, but will be required to reinvest the entire amount of all future semi-annual, quarterly or monthly distributions from any series of the Trusts. The application further states that unitholders of the Trust will be provided with a prospectus of Applicant prior to becoming participants in the reinvestment plans. Applicant states that each prospectus of future series of the Trusts will disclose the existence of the reinvestment privilege and provide a means for unitholders to indicate interest in reinvesting distributions in shares of the Applicant. Unitholders who have elected to participate in the reinvestment program will be entitled to virtually all rights of any shareholders of Applicant but will not be entitled to a reduced sales charge for quantity purchases of Applicant's shares and will not have the right to exchange shares of Applicant acquired pursuant to the reinvestment program for shares of other companies managed by the Adviser. The application states that any participant wishing to purchase shares of Applicant outside the reinvestment program will be required to satisfy Applicant's minimum investment requirements.

According to the application: (1) On each distribution date, or immediately thereafter, the trustee for the Trusts will forward funds representing participants' distributions of interest income, capital gains and principal to Applicant's co-underwriters who will purchase shares of Applicant for each participant at the net asset value per share next determined after receipt of the purchase order, plus a sales charge of 0.4% and (2) the transfer agent will maintain separate accounts for each participant in the reinvestment program and will mail confirmations concerning transactions to each participant. The application further states that a participant may elect to terminate participation in the reinvestment program and receive future distributions in cash by notifying the trustee for the Trusts in writing at least five days prior to the distribution date.

Applicant states that its prospectus will be amended to state that unit-holders of the Trusts will be permitted to invest their distributions in shares of Applicant at net asset value per share plus a reduced sales charge of 0.4% of the offering price, and states that the Adviser will retain the entire 0.4% sales charge and will bear the distribution expenses associated with the reinvestment programs.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except either to or through a principal underwriter for distribution or at a public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except at a current public offering price described in the prospectus. Accordingly, Applicant requests an exemption from the provisions of section 22(d) of the Act to permit the sale of its shares at a reduced sales charge to participants in the reinvestment programs proposed to be offered by the Trusts.

Section 6(c) of the Act, provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person,

security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that section 22(d) of the Act is intended to ensure that all investors purchase investment company securities on an equal basis and to prevent dilution of existing shareholders' equity. It asserts that because participants in the reinvestment program will be required to purchase shares at current net asset value plus a sales charge, the equity of existing shareholders will not be diluted. Applicant further asserts that the reduced sales charge is fair and equitable and in the best interests of Applicant's shareholders. In support of these assertions Applicant states that it believes that the sales costs associated with sales made pursuant to the reinvestment program will be lower than the costs associated with other sales of its shares. Applicant submits that such savings should be passed on to investors in the form of lower sales charges, and states that it believes the 0.4% sales charge to be sufficient to cover the increase in distribution expenses arising from the program. Applicant further states that its shareholders will benefit from the reinvestment program because an increase in Applicant's cash flow will enable it to meet redemptions without liquidating investments in its portfolio and will enable it to diversify further its securities holdings. Therefore, Applicant submits that the exemption it requests is 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.

Notice is further given that any interested person may, not later than April 5, 1982, 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 Applicant 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. 82-7025 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12289; 812-4990]

North River Securities Co., Inc. and North Oceanic Securities Co., Inc.; Filing of Application

March 11, 1982.

Notice is hereby given that North River Securities Co., Inc. ("North River"), 595 Madison Avenue, New York, New York 10022, a closed-end investment company registered under the Investment Company Act of 1940 ("Act"), and North Oceanic Securities Co., Inc. (the "New Corporation") 595 Madison Avenue, New York, New York 10022, filed an application on October 9, 1981, and an amendment thereto on February 11, 1982, for an order of the Commission pursuant to sections 17(d) and 23(c) of the Act and Rules 17d–1 and 23c–1(c) thereunder, approving the proposed merger of North River into the New Corporation, a privately owned corporation which will be an affiliate of North River. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that North River is a New York corporation with an authorized capital consisting of 1,000,000 shares of common stock, $1.00 par value, of which 776,835 shares are issued and outstanding. Applicants represent that these shares are traded in the over-the-counter market but are not listed on NASDAQ, and are held of record by approximately 330 shareholders. Applicants state that as of August 31, 1981, 97.00 percent of North River's outstanding common stock was owned of record by the following persons in the amounts indicated: Ira Guilden, 41.05% (318,905 shares); AIDC Corp., 31.68% (246,140 shares); Frazier & Co., 15.80% (122,746 shares); Paul Guilden, 7.77% (60,341 shares); IG Insurance Trust, .70% (5,403 shares) (collectively, the "North River majority shareholders").

Applicants represent that the remaining 23,300 shares of the outstanding common stock of North River, totalling 3.00 percent of the total outstanding shares, are owned by approximately 325 shareholders (collectively, the "North River minority shareholders").

Applicants state that Ira Guilden is Director, Chairman of the Board of Directors, President and Treasurer of North River and that he and Paul Guilden (his son) own 56.04 percent and 41.57 percent, respectively, of the outstanding capital stock of AIDC Corp., a Delaware corporation. Applicants state further that Frazier & Co. is wholly-owned by Paul Guilden and that IG Insurance Trust is a trust having less than ten beneficiaries established by Ira Guilden for the benefit of members of his family.

Applicants state that during the fiscal year ended February 28, 1981, the common stock of North River was traded in the over the counter market at a range of $9.00 to $9.50 and that as of the close of business on August 31, 1981, the bid price of such common stock was $9.50 per share and there was no asked price. Applicants state that the value of the total net assets of North River, as shown in the Annual report for the fiscal year ended February 28, 1981, was $11,930,234 and that based on such value, the net asset value per share of the common stock of North River was $15.36. Applicants state that there has been no substantial change in the value of the total net assets of North River since February 28, 1981.

Applicants represent that, as indicated in the Annual Report, North River's assets consist of common and preferred stocks, real estate and real estate loans, a vessel operated by a managing agent under a charter hire agreement, cash and cash items. Applicants state that the stocks owned by North River include 417,404 shares of the common stock of Baldwin Securities Corporation ("Baldwin"), a registered closed-end investment company of which Ira Guilden is the chairman of the board and of which he owns beneficially 25.66% of the outstanding shares. As of February 28, 1981, the stock of Baldwin owned by North River constituted approximately 11% of the outstanding shares of Baldwin, had a market value

of $3,234,881 and constituted 23.68% of the total assets of North River.

Applicants represent that at a meeting held on June 9, 1981, the Board of Directors of North River, including the two directors who are not "interested persons" of North River for purposes of the Act, unanimously approved a plan whereby North River would be merged into the New Corporation, a company incorporated in October, 1981, which has not yet issued any stock and which at the time of the merger will be wholly-owned by the North River majority shareholders. The plan provides that the North River minority shareholders will receive cash equal to the fair value of their stock of North River.

Applicants submit that pursuant to such plan, the Board designated the two directors who are not "interested persons" of North River as a valuation committee (the "Valuation Committee") to make recommendations to the Board with respect to the fair value to be attributed to the shares held by the North River minority shareholders in connection with the proposed merger of North River into the New Corporation. Applicants state that the Valuation Committee determined that in order to insure that the minority shareholders recieve a fair value for their shares, the value to be attributed to those shares should be based on the fair value of the assets which constitute the portfolio of North River rather than on the quoted market price of the shares. The Valuation Committee also determined that the sole material assets of North River for which the quoted market values as shown in North River's financial statements might not provide an appropriate value were the stock of Baldwin, the wholly-owned real estate and the vessel and appointed independent appraisers of those assets.

Applicants state that the net asset value per share to be paid to the minority shareholders pursuant to the proposed merger will be determined in the manner employed by North River in its Annual Report as of February 28, 1981, with the exception that the assets for which appraisals were obtained will be valued as follows. Applicants maintain that those appraisals resulted in a valuation of $3,078,355 for the Baldwin stock (as compared to $3,234,881 shown in North River's Annual Report as of February 28, 1981), $1,197,000 for the wholly-owned real estate (as compared to $1,190,604 shown in said Annual Report) and $1,865,000 for the vessel (as compared to $1,500,000 shown in said Annual Report. Applicants submit that subsequent to obtaining the foregoing appraisals, North River, at the request of the staff of the Commission, obtained two additional appraisals of the vessel and the wholly-owned real estate. Applicants submit further that these additional appraisals where considered by the Board of Directors of North River during the meeting on February 8, 1982, and that after considering all of such appraisals, the Board unanimously confirmed its decision to accept the first appraisal as the basis for determining the fair value of the vessel and unanimously voted to use the highest of the three appraisals, or $1,327,700, for purposes of determining the fair value of the wholly-owned real estate.

Applicants state that when the order of the Commission requested in the application has been granted, the merger of North River into the New Corporation will be consummated and the North River minority shareholders will receive cash for their North River shares on the basis of the net asset value per share computed as set forth above; provided, however, that said net asset value per share will be adjusted for changes in the quoted market value of the portfolio assets of North River other than the Baldwin stock, the wholly-owned real estate and the vessel occurring up to three business days before the date on which the notice of merger is mailed to the shareholders; and provided, further, that the appraisers giving the appraisals for the Baldwin stock, the wholly-owned real estate and the vessel will be asked to update such appraisals by reflecting any changes in the value of such assets occurring up to three business days prior to the date on which such notice of the merger is given.

Applicants propose that following receipt of the order requested in the application, all of the outstanding stock of the New Corporation will be issued to the North River majority shareholders, in consideration for the transfer to the New Corporation of all the shares of North River common stock owned by such shareholders. Applicants state that as a result of such transfer, the New Corporation will own 753,535 (of 97.00 percent) of the outstanding common stock of North River and will be deemed to be an "affiliate" of North River under the terms of the Act. Applicants state that, in addition, the North River majority shareholders at that time will be deemed to be affiliates of the New Corporation and North River.

Applicants state that, promptly thereafter, North River will mail to the North River minority shareholders a notice of the proposed merger and a copy of the Plan of Merger. Applicants state further that the notice and plan of merger will set forth the method by which the shares of common stock of North River have been valued for purposes of the merger. Approximately thirty days following the mailing of the notice and plan of merger to the shareholders of North River, the New Corporation will cause a Certificate of Merger to be filed with the office of the New York Secretary of State, thereby merging North River into the New Corporation, with the New Corporation being the surviving corporation. Applicants maintain that the North River minority shareholders will be notified of the consummation of the merger and advised that upon the submission of their stock certificate or certificates to North River, they will receive a check for the value of their shares.

Applicants claim that, even though the effect of the proposed merger will be to reduce the number of record shareholders of North River to below 300, the transaction will not be subject to the requirements of Rule 13e–3 under the Securities Exchange Act of 1934 (the "Exchange Act") because North River is not "an issuer subject to section 12(g) or section 15(d)" of the Exchange Act. Nevertheless, Applicants state that, while North River will not comply with the requirements of Rule 13e–3 under the Exchange Act, they believe that the purposes of the Rule will be substantially accomplished by the filing of the application and by the procedures to be followed in connection with the proposed merger. Applicants submit that the Plan of Merger and Notice of Merger required by the New York Business Corporation Law to be provided to the North River minority shareholders will substantially fulfill the disclosure purposes of the Rule by providing the shareholders with certain information which North River would be required to disclose under the Rule.

Applicants submit that the New Corporation will not be deemed to be an "investment company" subject to the registration requirements of the Act by virtue of section 3(c)(1) thereof, inasmuch as it will not be making or proposing to make a public offering of its securities and its outstanding securities will be beneficially owned by not more than 100 persons. After consummation of the merger, an application will be filed with the Commission for an order pursuant to section 8(f) of the Act declaring that North River has ceased to be an investment company. Applicants state that the North River majority shareholders have no current intention to liquidate the New Corporation

following the merger and that the North River majority shareholders know of no current intention on the part of the management of Baldwin to liquidate Baldwin.

Section 17(d) of the Act prohibits any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered company is a joint or a joint and several participant with such person. Rule 17d–1 under the Act provides, in part, that no affiliated person of any registered investment company, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such registered company is a participant, unless an application regarding such joint enterprise has been granted by an order entered prior to its adoption. In passing upon such applications, the Commission will consider whether the participation of such registered company in such joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants state that since following the transfer of the North River stock owned by the North River majority shareholders to the New Corporation, the New Corporation will own approximately 97 percent of the outstanding shares of North River, the New Corporation will be deemed to be an "affiliate" of North River and the proposed merger will involve a transaction between a registered investment company (North River) and its affiliates (the New Corporation and the North River majority shareholders).

Section 23(c) of the Act prohibits registered closed-end companies from purchasing any securities of any class of which it is the issuer except under such circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Rule 23c–1(a) under the Act is a safe harbor provision that permits the purchase, subject to certain conditions, by a registered closed-end investment company of securities of which it is the issuer. Applicants contend that the proposed merger does not involve a purchase by a registered closed-investment company of its securities and thus that Rule 23c–1(a) is not applicable to the proposed transaction. Nevertheless, it is claimed that the proposed merger will be in compliance with all of the conditions of Rule 23c–1(a) except paragraphs 2, 6, 10 and 11 of such Rule. In addition, the proposed transaction will not be consistent with paragraph 4 of Rule 23c–1(a) by reason of the fact that one of the North River minority shareholders (owning less than 500 shares) may be deemed to be an affiliate of North River.

Rule 23c–1(c) provides that a registered closed-end investment company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of the Rule 23c–1 and which is not made pursuant to section 23(c) (1) or (2) of the Act. Accordingly, the application states that in the event that the proposed merger should be deemed to be an indirect repurchase by North River of its security, North River also requests an exemption from section 23(c) of the Act to the extent necessary to permit the proposed merger without compliance with the conditions set forth in paragraphs (2), (4), (6), (10) and (11) of Rule 23c–1. North River contends that those conditions are of no significance to the minority shareholders in connection with the transaction contemplated.

In support of the exemptive relief requested, Applicants state that the Board of Directors of North River believes that the proposed merger is consistent with the provisions, policies and purposes of the Act. According to the Applicants, the nature of North River's investments and its relatively small size, as well as the small percentage of North River's common stock owned by the North River minority shareholders, make continued existence by North River as a public company under the Act inappropriate and unduly burdensome and expensive. Applicants contend that participation by the North River majority shareholders in the proposed merger will not be on a more advantageous basis than that of the North River minority shareholders. In accordance with the proposed manner of valuation of the shares of North River described above, each of the North River minority shareholders will receive an amount for his shares based on the value of the assets of North River which is likely to be well in excess of the current public trading price of such stock. Accordingly, it is asserted that the proposed transaction will afford the North River minority shareholders an opportunity to receive a price for their shares substantially in excess of their market value. In addition, Applicants contend that the Board of Directors has considered the difficulty of obtaining full value for all of the assets of North River on any liquidation or merger with another registered investment company (even if such merger could be arranged) and the substantial adverse tax impact such liquidation or merger would have on the North River majority shareholders. Applicants contend further that the Board also considered the relatively high cost of regulatory compliance required as a result of North River's status as a registered investment company, which can be avoided once the proposed merger into the New Corporation is consummated. Finally, Applicants state that any shareholder who objects to the plan of merger will be entitled to the dissenters' rights set forth in section 623 of the New York Business Corporation Law.

Notice is further given that any interested person may, not later than April 5, 1982, 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 reason 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 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. 82–7073 Filed 3–15–82; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 12284; 812-4985]

Savings Industry Primary Liquidity Fund, Inc.; Filing of Application

March 9, 1982.

Notice is hereby given that Savings Industry Primary Liquidity Fund, Inc. ("Applicant"), 12900 Preston Road, Dallas, Texas 75230, an open-end, non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 6, 1981, and an amendment thereto on December 17, 1981, requesting an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was incorporated under the Texas Business Corporation Act on April 22, 1981. Applicant further states that Liquidity Assets Management, Inc., a Corporation registered under the Texas Securities Act, is its investment adviser.

Applicant states that its investment objective is to maximize current income while preserving capital and maintaining portfolio liquidity. Applicant states that it intends to offer its shares for sale only to members of the Federal Home Loan Bank System ("Bank System"). In order for its shares to qualify as short-term liquidity investments for Bank System members, Applicant's portfolio must be restricted to those securities that qualify as short-term liquid assets ("Eligible Investments") under § 523.10(h) of the Regulations of the Federal Home Loan Bank Board. Such Eligible Investments currently include: (i) Time deposits in a Federal Home Loan Bank, the Bank for Savings and Loan Associations, Chicago, Illinois, and the Savings Banks Trust Company, New York, New York; (ii) obligations issued or fully guaranteed the U.S. Government and obligations issued or fully guaranteed by certain U.S. Government agencies and instrumentalities; (iii) certain negotiable and non-negotiable time and savings deposits, including deposits subject to repurchase agreements and loans of day(s) funds, in commercial banks insured by the Federal Deposit Insurance Corporation; (iv) certain banker's acceptances of commercial banks insured by the Federal Deposit Insurance Corporation; and (v) certain general obligations issued by public housing agencies of any state, territory or possession of the United States or political subdivision thereof having the full faith and credit of the United States. The maturities of such securities and obligations vary and are limited pursuant to said § 523.10(h), but all such maturities are 1 year or less from the date of acquisition by the Fund. Applicant states that it may enter into repurchase agreements, reverse repurchase agreements and portfolio lending transactions involving Eligible Investments.

In support of the relief requested Applicant submits that as a result of the experience of others in managing "money-market" mutual funds similar to Applicant, it is apparent that two qualities are particularly important to investors: (1) Stability of principal, and (2) a steady flow of investment income. Applicant believes that its policy of investing in high quality "money market" instruments of short maturities, combined with a stable net asset value of $1.00 per share will provide those features to investors.

Applicant states that its management believes that, given the nature of its investment policies and restrictions, there normally will not be a material discrepancy between the market value and the amortized cost value of its portfolio securities.

Applicant represents that its board of directors has determined in good faith that the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant and reflects fair value of such securities.

Applicant has agreed that each of the following may be made a condition to the granting of the exemptive relief requested:

(a) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(b) Included among the procedures to be adopted by Applicant's board of directors shall be the following:

(i) Review by the board of directors as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share, as determined by using available market quotations, from the $1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money-market instruments published by reputable sources.

(ii) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(iii) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce, to the extent reasonably practicable, such dilution or other unfair results, which action may include redemption of shares in kind, selling of portfolio instruments prior to maturity to realize capital gains or losses, shortening Applicant's average portfolio maturity, withholding of dividends, or utilization of a net asset value per share as determined by using available market quotations.

(c) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(d) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications

thereto) described in condition (b) above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents so preserved shall be subject to inspection by the Commission in accordance with section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(e) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Applicant's board of directors. In this regard reference is made to the special purpose of the Fund as a short-term liquidity vehicle for members of the Bank System, and to the investments to which the Fund's portfolio is limited by its investment policy, all as described in the Registration Statement.

(f) In determining whether to lend securities to a particular broker, dealer or financial institution, Applicant's investment adviser will consider all relevant facts and circumstances, including the credit-worthiness of the broker, dealer or institution.

(g) Applicant will not enter into any securities lending agreement having a duration of greater than one year.

(h) Any securities with maturities in excess of one year that Applicant may receive as collateral for a particular loan will not become part of Applicant's portfolio either at the time of such loan or in the event the borrower defaults on its obligation to return the loaned securities.

(i) If at any time, by reason of changes in Applicant's portfolio or otherwise, investments in non-negotiable time deposits, including non-negotiable certificates of deposit, having more than one but less than seven days remaining to maturity, and other securities or obligations which are restricted as to disposition or for which market quotes are not readily available, constitute more than 10% of its portfolio, Applicant shall promptly take such action as may be necessary or appropriate to reduce its holdings of such investments to 10% or less of its portfolio, other than by liquidation of such investments, and will compute its net asset value per share on a mark-to market basis until its holding of such investments is so reduced.

(j) Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition (b)(iii) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Applicant further represents that the granting of the requested exemptions is 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.

Notice is further given that any interested person may, not later than April 5, 1982, 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/her interest, the reason for such request, and the issues, if any, of fact or law proposed to controverted, or he/she may request that he/she 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 Applicant 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 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. 82-7026 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12286; 812-5077]

Security First Money Market Fund, Inc.; Filing of Application

March 10, 1982.

Notice is hereby given that Security First Money Market fund, Inc. ("Applicant"), 1800 Avenue of the Stars, Los Angeles, California 90067, an open-end, diversified management investment company, filed an applicaton on January 11, 1982, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting the Applicant from the provisions of Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the Applicant to compute its price per share to the nearest one cent on a share value of one dollar. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment objective is maximum current income consistent with preservation of capital and the maintenance of liquidity. Applicant states that it will seek to obtain its objective through investment in high quality money market instruments maturing in one year or less. The Applicant represents that its portfolio may be invested in direct obligations of the U.S. government; securities issued or guaranteed by U.S. government sponsored enterprises, Federal agencies and international institutions; certificates of deposit, bankers' acceptances and other short-term debt obligations of commercial banks meeting certain criteria; commercial paper meeting certain quality criteria; repurchase agreements; negotiable certificates of deposit and other short-term debt obligations of certain savings and loan associations; and securities issued or guaranteed by the government of Canada, a province of Canada, or an instrumentality or political subdivision thereof.

Applicant states that it was organized under the laws of the State of Maryland in September, 1980. Applicant submits that stabilizing its net asset value per share at $1.00 by use of the penny rounding method of valuation would benefit Applicant and its shareholders because (1) shareholders would have the convenience of being able to determine the value of their holdings simply by knowing the number of shares that they own, (2) Applicant could be competitive with the increasing number of money market mutual funds that attempt to maintain a $1.00 net asset value per share, (3) shareholders and potential shareholders are not concerned with the minor differences which might occur between yield achieved through "market" pricing and the yield computed by using the "penny rounding" valuation method, and (4) maintaining net asset

value per share at a constant price means that there would be no realization of nominal capital gains and losses that might otherwise occur with a "floating" net asset value.

Applicant states that securities in its portfolio for which representative market quotations are readily available will be valued at the most recent bid price or yield equivalent as quoted by one or more dealers who make markets in such securities. Securities originally purchased with remaining maturities of 60 days or less will be valued at their amortized cost value. Other securities will be appraised at values deemed best to reflect their fair value as determined in good faith by or under the supervision of officers of the Applicant in a manner specifically authorized by the Board of Directors.

Rule 22c–1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption and repurchase all be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In Investment Company Act release No. 9786 (May 31, 1977) the Commission issued an interpretation of Rule 2a–4 expressing its view that (1) it is inconsistent with Rule 2a–4 for money market funds to value their assets on an amortized cost basis except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation method is determined to be appropriate by each respective fund's board of directors, and (2) it is inconsistent with Rule 2a–4 for money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a–4.

Section 6(c) of the Act provides, in pertinent part, 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 of 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.

Applicant agrees that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within its overall duty or care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's net asset value per share as computed for the purposes of effecting sales, redemptions and repurchases, rounded to the nearest one cent, will not deviate from one dollar.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. Applicant will not purchase a portfolio instrument with a remaining maturity of greater than one year, nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

Notice is further given that any interested person may, not later than March 31, 1982, 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 Applicant 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. 82–7027 Filed 3–15–82 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12290; (813–51)]

Merrill Lynch Kecalp Ventures Limited Partnership 1982, Kecalp Inc.; Filing of Application Pursuant to Section 6(b) of the Act for Exemption From All Provisions of the Act

March 11, 1982.

Notice is hereby given that Merrill Lynch Kecalp Ventures Limited Partnership 1982 (the "Initial Partnership"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, and Kecalp, Inc. (the "General Partner", hereinafter referred to with the Initial Partnership as the "Applicants"), One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on July 13, 1981, and amendments thereto on January 25, February 19, and March 9, 1982, pursuant to section 6(b) of the Act for an order exempting the Initial Partnership and subsequent similar limited partnerships (the "Subsequent Partnerships") which may be offered to certain employees of Merrill Lynch & Co., Inc. ("Merrill Lynch") and its subsidiaries, from all provisions of the Act or, alternatively, from certain provisions of sections 8(b), 10(a), (b) and (f), 14(a), 15(a), 16(a), 17(a), (d), (f) and (g), 18(a)(1) and (i), 19(b), 20(a), 23(c),

30(a), (b) and (d) and 32(a) of the Act. The application further requests an order pursuant to section 45(a) of the Act granting confidential treatment to the extent periodic reports are filed with the Commission under section 30 of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Initial Partnership, a limited partnership formed under the laws of the State of Delaware, was initiated by employees of Merrill Lynch, a publicly-owned holding company, and its subsidiaries, which provide a wide range of securities and other financial services to individuals, corporations, institutions and governments. Applicants further state that the Initial Partnership is one of a series of investment limited partnerships which Merrill Lynch proposes to establish in order to enable directors and certain officers and other employees to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of Merrill Lynch or its subsidiaries without the necessity of each investor identifying and analyzing the investment merit of such opportunities.

Applicants represent that although the Initial Partnership and Subsequent Partnerships (collectively, the "Partnerships") may vary from each other in terms of specific investment objectives (the Initial Partnership, for example, expected to invest primarily in venture capital investments and a Subsequent Partnership in 1982 expected to invest primarily in tax-oriented investments), structurally and operationally they will be similar. The Partnerships will operate as closed-end investment companies of the management type within the meaning of the Act. Participation in each of the Partnerships will be limited to directors of Merrill Lynch and key officers and other employees of Merrill Lynch and its subsidiaries who, in the case of officers and employees, earned a gross income for the most recent calendar year which exceeds the minimum amount specified by the General Partner for each Partnership. In the case of the Initial Partnership, participation will be limited to non-employee directors of Merrill Lynch and to certain officers and other employees of Merrill Lynch and its subsidiaries who earned at least $75,000 during the 1981 calendar year or whose annualized salary for such period was at least $75,000. As a condition to the issuance of the order requested herein, the Applicants further agree that Subsequent Partnerships will not be offered to officers and other employees of Merrill Lynch and its subsidiaries who earned (or whose annualized salary was) less than $60,000 with respect to the most recent calendar year.

Applicants further represent that each prospective limited partner of the Partnerships (the "Limited Partners") shall be required to subscribe for limited capital contribution specified for the particular Partnership by the General Partner (i.e., $5,000 or five Units at $1,000 per Unit for the Initial Partnership). In addition, investments by Limited Partners who are officers or employees of Merrill Lynch or one of its subsidiaries will be limited to a specified percentage of such person's income earned (or annualized salary) from Merrill Lynch or its subsidiaries with respect to the most recent calendar year. Moreover, investments by non-employee directors of Merrill Lynch will be limited to a specified multiple of the annual fee received by them for serving as a director of Merrill Lynch. The Applicants anticipate that one or more Partnerships will be formed annually with the offering of Units to commence in the early spring of each year. At present the General Partner believes approximately 2,500 directors, officers, and employees, which constitutes less than 10% of the total directors, officers, and employees of Merrill Lynch and its subsidiaries, will be eligible to become Limited Partners of the Initial Partnership.

As provided in the Agreement and Certificate of Limited Partnership of the Initial Partnership, Units are non-transferable except with the express consent of the General Partner and, in any event, are not transferable to persons who do not meet the eligibility criteria stated above, except Units may be transferred to members of a Limited Partner's immediate family or, by operation of law, to the estate or heirs of a deceased Limited Partner or to the committee, guardian, or conservator of a Limited Partner upon adjudication of incompetance. Applicants contemplate that the partnership agreements for the Subsequent Partnerships will contain substantially identical provisions.

Applicants state that the management of the Partnerships will be exclusively vested in the General Partner, a wholly-owned subsidiary of Merrill Lynch. Applicants further state that at all times the directors and officers of the General Partner must be officers or employees of Merrill Lynch or its subsidiaries (and may also, but need not, be Limited Partners). The Applicants represent that the General Partner will be allocated and receive 1% of each item of income, profit, loss, credit, expense, and deduction of the Partnerships. Although the General Partner will make no cash contribution to the Partnerships, other than a nominal contribution upon the formation of the Partnerships, it is anticipated that the General Partner will assume all operating expenses of the Partnerships, including brokerage expenses not borne by other affiliates of Merrill Lynch. Applicants further represent that no compansation will be paid by the Partnerships to the General Partner or to the General Partner's directors or officers for their services to the General Partner or the Partnerships.

Applicants state that the Partnerships will send the Limited Partners annual reports regarding the operations and investment assets of the Partnerships. The reports will contain financial statements of the Partnerships and will disclose, together with other information, any outstanding borrowings of the Partnerships during the period covered. In addition, as soon as practicable after end of the fiscal year, reports will be transmitted to each Limited Partner setting forth information with respect to his income, gain, deduction, credit, profit and loss for federal income tax purposes, resulting from the operation of the Partnership during such fiscal year, and an appraisal of the value of such Limited Partner's Units.

Section 2(a)(13) of the Act provides that an "employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons".

Section 6(b) of the Act provides that, "Upon application by any employees' security (sic) company, the Commission shall by order exempt such company from the provisions of the Act and of the rules thereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order shall apply, the Commission shall give due weight,

among other things, to the form or organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security."

The Applicants assert that each Partnership meets the definition of an "employees' securities company" contained in section 2(a)(13) of the Act and should, as such, be exempted from all provisions of the Act. Alternatively, the Applicants request that the Commission issue an order pursuant to sections 6(b) and 45(a) of the Act exempting the Partnerships, to the extent noted below, from the following specific provisions of the Act:

(a) Section 8(b) of the Act and Rule 8b–16 thereunder would require the Partnerships to submit annual amendments to their Registration Statements on Form N–2 filed with the Commission under the Act. The Applicants assert that the filing of annual amendments to such Registration Statements is not necessary for the protection of investors, because the Partnerships are closed-end management companies which intend to have only one offering of limited partnership interests, for which there will by no trading market. In addition, the Applicants state that the Limited Partners will receive annual reports and accountings.

(b) Section 10(a) of the Act provides that no registered investment company shall have a board of directors more than 60 percent of the members of which are interested persons of such registered company. The Applicants request an exemption from section 10(a) to permit the Partnerships to include as the sole General Partner a subsidiary of Merrill Lynch and to permit all the directors and officers of the General Partner to be persons who are employees of Merrill Lynch or its subsidiaries.

(c) Secton 10(b)(1) of the Act provides that no registered investment company shall employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers. Section 10(b)(2) of the Act further makes it unlawful for a registered investment company to use as a principal underwriter of securities issued by it any director, officer, employee of such registered company or any person of which any such director, officer or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters. The Applicants request an exemption from section 10(b) of the Act to permit the Partnerships to employ as broker and principal underwriter a subsidiary of Merrill Lynch affiliated with the General Partner.

(d) Section 10(f) of the Act provides, in relevant part, that no registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. Rule 10f–3 promulgated under the Act provides an exemption from the prohibition of section 10(f) provided that certain specified conditions are met. The Applicants request an exemption from section 10(f) of the Act to permit the Partnerships to purchase securities through an underwriting or selling syndicate of which a Merrill Lynch subsidiary acts as principal underwriter. The Applicants assert that they are unable to avail themselves of the conditional relief from section 10(f) of the Act provided by Rule 10f–3 because the Partnerships lack any disinterested directors to perform the tasks required by paragraph (h) of Rule 10f–3. Nevertheless, for purposes of the exemption requested, the Applicants undertake to otherwise comply with all the remaining provisions of Rule 10f–3.

(e) Section 14(a) of the Act provides, in pertinent part, that no registered investment company shall make an initial public offering of its securities unless it has a net worth of $100,000. The Applicants request an exemption from section 14(a) to permit the Partnerships to offer limited partnership interests to participants prior to the time such Partnership has a net worth of $100,000.

(f) Section 15(a) of the Act provides, among other things, that no person shall act as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered investment company and which may be terminated at any time without penalty by the board of directors of such investment company, or by vote of a majority of the outstanding voting securities of such company.

The Applicants request an exemption from section 15(a) of the Act to permit Merrill Lynch subsidiaries to act from time to time as an investment adviser to a Partnership without a written contract and without the approval of the Limited Partners. Applicants assert that a written contract is not necessary because all investment decisions will be made by the General Partner, which will not be compensated therefor. Moreover, if any fees are paid to any person, they will be paid by Merrill Lynch or a subsidiary of Merrill Lynch and will not be charged, in whole or in part, to the Partnerships.

(g) Section 16(a) of the Act provides, among other things, that no person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company at an annual or special meeting duly called for such purpose. The Applicants request an exemption from section 16(a) of the Act to permit Merrill Lynch to appoint and replace directors of the General Partner without the approval of the Limited Partners. The Applicants assert that since it is a requirement that all directors and officers of the General Partner be employees of Merrill Lynch or its subsidiaries, this exemption is necessary to maintain the requisite community of interest.

(h) Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company or any affiliated person of such an affiliated person, acting as principal, from knowingly purchasing or selling any security or other property from or to such registered company, subject to certain exceptions. The Applicants request an exemption from section 17(a) of the Act to permit the Partnerships to (i) invest, as appropriate, in partnerships or other investment vehicles offered by Merrill Lynch subsidiaries on a principal basis or to purchase securities from such vehicles, (ii) purchase interests in a company where the Partnerships or other Merrill Lynch affiliates already own 5% or more of the voting securities of the company or where such company is otherwise affiliated with the Partnerships, (iii)

participate as a selling stockholder in a public offering that is underwritten by a subsidiary of Merrill Lynch or in which a subsidiary of Merrill Lynch acts as a member of the underwriting group, and (iv) acquire real property interests from Merrill Lynch or its affiliates. Applicants represent that these transactions will only be effected upon determination by the board of directors of the General Partner that the terms of the transactions are reasonable and fair to the Limited Partners of the Partnership involved in such transaction and do not involve overreaching of such Partnership or its Limited Partners on the part of any person concerned. In addition, the Partherships propose to make money market fund or other short-term investments at times when it may be desirable. It is contemplated that such short-term investments will be purchased from, and sold to, subsidiaries or affiliates of Merrill Lynch at market value without payment of fees by the Partnerships. In connection with investment in funds advised by Merrill Lynch subsidiaries, the Applicants further state that invested assets will be subject to a management fee, but on the same basis as those charged to and paid by unaffiliated persons participating in the same fund or transaction. The Applicants represent that the Limited Partners will have been fully informed of the possible extent of the Partnerships' dealings with affiliates and, as successful professionals in the securities business will be well situated, it is contended, to evaluate the attendant risks. The Applicants further represent that they recognize that any types of transactions otherwise subject to Section 17(a) of the Act for which exemptive relief has not been requested would require specific approval by the Commission.

(i) Section 17(d) of the Act and Rule 17d–1 thereunder provide, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company, or company controlled by such registered company, is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and an order granting such application has been issued. The Applicants request an exemption from section 17(d) of the Act to permit the Partnerships to engage in transactions in which certain affiliated persons of the Partnerships may also be participants. The Applicants assert that, due to the number and sophistication of the potential Limited Partners of the Partnerships and affiliated persons of such Limited Partners, strict compliance with the requirements of section 17(d) of the Act may force the Partnerships to be precluded from many otherwise attractive investment opportunities simply because a Limited Partner or other affiliated person of Merrill Lynch also had, or contemplated making, a similar investment.

The application states that the Partnerships may invest in investment opportunities offered to, or which come to the attention of, Merrill Lynch and its subsidiaries or officers thereof, that are unsuitable for Merrill Lynch or its subsidiaries for various reasons. The Applicants undertake that the Partnerships will not make any investment in which Merrill Lynch or any of its subsidiaries, or any officer, director or employee of the General Partner is a participant or plans concurrently or otherwise directly or indirectly to become a participant, except that this undertaking shall not be applicable to (i) investments by the Partnerships in any other partnership or other investment vehicle which is sponsored or managed by Merrill Lynch or its affiliates or (ii) investments by the Partnerships in which a partnership described in clause (i) is a participant or plans to become a participant and which would not be prohibited investments for the Partnerships except that Meriil Lynch or any of its subsidiaries, or one or more officers, directors or employees of the General Partner, have a partnership interest in, or compensation arrangement with the partnership described in clause (i). Applicants state that any investments which are made concurrently with affiliates of Merrill Lynch will be made by the Partnerships on the same basis as such affiliates. The Applicants represent that they recognize that any types of transactions otherwise subject to section 17(d) of the Act for which exemptive relief has not been requested would require specific approval by the Commission.

The Applicants further have represented, with reference to the exemptions requested from sections 17 (a) and (d), that the directors of the General Partner will maintain the records required by 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act. Finally, officers and directors of the General Partner will review each investment situation described in clauses (i) and (ii) above and make a determination that any such investment by an affiliate would not disadvantage the Partnership in making such investment, maintaining its investment position or disposing of such position. In this regard, all minutes of meetings of the board of directors of the General Partner, including all procedures adopted by the General Partner in connection with its evaluation of investment, will be available for inspection by Limited Partners.

(j) Section 17(f) of the Act and Rule 17f–1 thereunder provide, in pertinent part, that no registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 except pursuant to a written contract which shall have been approved by a majority of the board of directors or such investment company. The Applicants request an exemption from section 17(f) of the Act to the extent necessary to permit Merrill Lynch or its subsidiaries, one of which is a member of a national securities exchange, to act as custodian without a written contract. The Applicants assert that, with the exception of a written contract, it will otherwise comply with all the remaining provisions of Rule 17f–1.

(k) Section 17(g) of the Act and Rule 17g–1 thereunder provide, as relevant here, that the fidelity bond protecting investors of a registered management investment company against larceny and embezzlement of its officers and employees be approved by a majority of the board of directors who are not "interested persons" of the investment company. The Applicants seek an exemption from section 17(g) of the Act to the extent necessary to permit the Partnerships to comply with Rule 17g–1 without the necessity of having a majority of the board of directors of the General Partner who are not "interested persons" take such action and make such approvals as set forth in the rule. Except as stated above, the Partnerships will otherwise comply with the provisions of Rule 17g–1.

(l) The Applicants further request an exemption from section 18(a)(1) of the Act which provides, in pertinent part, that it shall be unlawful for any registered closed-end company to issue or sell any class of senior security which represents indebtedness unless (A) immediately after issuance or sale, it will have an asset coverage of at least 300 per centum; (B) the declaration of any dividend or any other distribution upon any class of the capital stock, or the purchase of any such capital stock is

prohibited unless the snior security has at the time an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution or purchase; (C) the holders of such senior securities can elect a majority of the directors of the company where the asset coverage is less than 100 per centum for twelve consecutive calendar months, and a provision is made for the recognition of a default where the asset coverage is less than 100 per centum for 24 consecutive months. The Partnerships propose to issue senior securities representing indebtedness for the purpose of acquiring real estate interests or other property not constituting securities. The Applicants assert that inasmuch as such borrowings will only be effected on a nonrecourse basis, neither the Partnerships nor any General Partner or any Limited Partner of the Partnerships will have any personal liability to pay the principal of, or any interest on, such borrowings, and, therefore, any such lender would be precluded from looking beyond the property securing the indebtedness to the assets of the Partnerships or of any General Partner or any Limited Partner. The Applicant further represents that to the extent that Partnerships otherwise issue senior securities, the Partnerships will only do so where the issuance of the senior securities is in compliance with the provisions of section 18(a)(1) of the Act. In addition, the potential borrowings will be disclosed to investors in the prospectuses of the Partnerships.

(m) Section 18(i) of the Act provides, in pertinent part, that every share of stock issued by a registered management company shall be a voting stock and have equal voting rights with every other outstanding voting stock. In requesting relief from section 18(i) of the Act, the Applicants assert that in order to maintain the status of each Partnership as a limited partnership with limited liability and not either a general partner with unlimited liability or an association taxable as a corporation, Limited Partners may not vote on certain matters that are customarily voted upon by shareholders in corporations organized under state business corporation acts.

(n) Section 19(b) of the Act provides, in pertinent part, that it shall be unlawful in contravention of such rules, regulations or orders as the Commission may prescribe for any registered investment company to distribute long-term capital gains more frequently than once every 12 months. Rule 19b–1(b) under the Act provides, as herein relevant, that no registered investment company which is not a "regulated investment company" as defined by Section 851 of the Internal Revenue Code shall make more than one distribution of capital gains in any one taxable year of such investment company. The Applicants request an exemption from section 19(b) of the Act to permit the Partnerships to distribute their portfolio securities, or the proceeds of such liquidated portfolio securities, to the Limited Partners more than once a year, a part of which could reflect long-term capital gains. The Partnerships may hold each investment only until it becomes liquid and then to distribute either the investment or the proceeds thereof to its Limited Partners. Accordingly, the Applicants contend that compliance with section 19(b) of the Act might seriously interfere with its proposed operations and that such a restriction would be contrary to the best interests of investors.

(o) Section 20(a) of the Act and Rule 20a–1 thereunder generally require that every registered investment company in soliciting proxies comply with the requirements of section 14(a) of the Securities Exchange Act of 1934 relating to such proxy material. The Applicants request an exemption from the requirements of section 20(a) of the Act in connection with the Limited Partners' right to remove the General Partner, to approve significant amendments to the respective Partnership Agreements, and to grant the General Partner their power of attorney to execute and file certain documents on behalf of the Partnerships and to amend the respective Partnership Agreements in minor respects. In seeking such relief, the Applicants assert that compliance with the requirements of section 20(a) of the Act could involve difficult questions of interpretation likely to make the process of preparing and filing proxy statements unusually costly and prolonged. The Applicants further assert that such costs seem unnecessary in view of the limited number and sophisticated nature of the Limited Partners. As a condition of its exemption from the provisions of section 20(a) and the rules and regulations thereunder, the Applicants agree that any solicitation of proxies of the Limited Partners will be conducted in accordance with the provisions of section 14(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(p) Section 23(c)(3) of the Act permits a closed-end investment company to purchase its own securities under such circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Rule 23c–1(a) under the Act recites the conditions under which a registered closed-end company may purchase for cash securities of which it is the issuer other than on a securities exchange or pursuant to tenders. The Applicants seek an exemption from section 23(c)(3) to permit the Partnerships to repurchase limited partnership interests in the Partnerships upon the death of a Limited Partner. The Partnerships will not be able to satisfy the condition set forth in Rule 23c–1(a)(4) because in each repurchase the seller of the limited partnership interest (i.e., the Limited Partner) would be an affiliated person of the Partnership. Nevertheless, for purposes of the exemption, the Partnerships will otherwise comply with the conditions set forth in paragraphs (5), (6), (7), (8), (9) and (11) of the rule.

(q) Sections 30(a), 30(b) and 30(d) of the Act and the rules thereunder generally require that registered investment companies prepare and file with the Commission and prepare and mail to their shareholders certain periodic reports and financial statements. The Applicants seek exemptions from Sections 30 (a), (b) and (d) of the Act to the extent necessary to exempt the Partnerships from filing quarterly and annual reports with the Commission, and to permit it to report only annually to the Limited Partners concerning its portfolio securities in the manner prescribed by the Partnership Agreement. The Applicant's state that, pursuant to the terms of the Partnership Agreements, all the information contained in such filings must be sent to the Limited Partners, the only class of people truly interested in such material. The Applicants further anticipate that a substantial portion of the Partnerships' investments may require a sophisticated and complex valuation. In view of this fact and the lack of trading or public market for the Partnerships' Units, the Applicants submit that to allow annual rather than semi-annual reports would be consistent with the protection of investors and the policy fairly intended by the Act.

The Applicants further request that to the extent filings under section 30 are made by the Partnerships, such filings be afforded confidential treatment under section 45(a) of the Act which provides in pertinent part that information filed with the Commission shall be made available to the public, unless and except insofar as the Commission by

order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest and for the protection of investors. The Applicants assert that the investment situations in which the Partnerships would be investing might not be generally available to the public and if made public may create an impression or expectation not warranted in Merrill Lynch's industry. The Applicants further state that there is to be no public trading in the Units and the only persons possibly interested in such information will have all such data sent directly to them.

(r) Section 32 of the Act provides, among other things, that the selection of independent public accountants must be ratified by the shareholders of the investment company. The Applicants request an exemption from section 32(a) of the Act to permit the General Partner to select independent certified public accountants for the Partnerships without submitting such selection to the Limited Partners of each Partnership for rejection or ratification.

The Applicants state that the above exemptions are necessary or relevant to the operations of the Partnerships as an investment program uniquely adopted to the needs of directors, officers and employees of Merrill Lynch and its subsidiaries. The Applicants further state that these exemptions are necessary to control the investment activities of the Partnerships to insure that the community of interest among all participants is maintained and to operate the Partnerships as contemplated. On the basis of the foregoing, the Applicants submit that the protections provided in the sections of the Act from which exemptions have been requested are not necessary, appropriate or consistent with the protection of investors provided by the Act in view of the substantial community of interest among all the parties and the fact that each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

Notice is further given that any interested person may, not later than April 2, 1982, 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 reason 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 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. 82–7074 Filed 3–15–82; 8:45 am]

BILLING CODE 8010–01–M

[File Nos. 2–33723 and 22–11514]

PepsiCo, Inc.; Application and Opportunity for Hearing

March 11, 1982.

Notice is hereby given that PepsiCo, Inc. (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder") under an indenture of the New York City Industrial Development Agency (the "Bond Indentured"), which is not qualified under the Act and under which the Applicant is also an obligor, and the successor trusteeship of Schroder under an indenture of the Applicant which is qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under the Bond Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant had outstanding as of January 15, 1982, $606,000 of 6½% Convertible Subordinated Debentures due 1994 (the "Debentures"), which were originally issued by Rheingold Corp. ("Rheingold"), a New York corporation which was merged into the Applicant. The Debentures were issued under an Indenture, dated as of August 1, 1969, (the "Original Indenture"), between Rheingold and Manufacturers Hanover Trust Company ("MHTC") as trustee, which indenture was amended by a Supplemental Indenture, dated as of December 7, 1973 (the "First Supplemental Indenture"), between Rheingold and MHTC, and a Supplemental Indenture, dated as of December 27, 1975 (the "Second Supplemental Indenture"), among United Beverages, Inc. (successor to Rheingold), the Applicant and MHTC. (The Original Indenture, as so supplemented, being hereinafter referred to as the "Debenture Indenture".) Pursuant to the Second Supplemental Indenture, the Applicant assumed the obligations of Rheingold under the Debenture Indenture. At the time of issuance, the Debentures were registered under the Securities Act of 1933, as amended (Registration No. 2–33723), and the Debenture Indenture was qualified under the Act. By an Instrument of Resignation, Appointment and Acceptance, dated as of September 11, 1981, MHTC resigned as trustee under the Debenture Indenture and Schroder accepted its appointment as successor trustee.

2. The New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic of the State of New York (the "Agency") had outstanding as of January 15, 1982, $700,000 of its Industrial Development Revenue Bonds (1981 PepsiCo, Inc. Project) (the "Bonds") issued under an Indenture of Mortgage and Trust, dated as of November 1, 1981 (the "Bond Indenture"). Schroder is the indenture trustee under the Bond Indenture. The Bonds were not required to be and were not registered under the Securities Act of 1933 and the Bond Indenture was not required to be and was not qualified under the Act.

3. The Applicant is not the issuer of the Bonds. However, the Applicant has unconditionally guaranteed the payment of the principal of and interest on the Bonds. Accordingly, the Bond Indenture may, for the purposes of section 310(b) of the Act and section 608 of the Debenture Indenture be "another indenture under which any other securities or certificates of interest or participation in any other securities of an Obligor [i.e., the Applicant] * * * are outstanding * * *" with the result that there could be a conflicting interest if the same institution were to serve as trustee under the Debenture Indenture and the Bond Indenture.

4. Neither the Applicant nor the Agency are in default under the Bond Indenture and the Applicant is not in default under the Debenture Indenture.

5. The Applicant's obligations with respect to the Debentures are, by the terms thereof and of the Debenture Indenture, subordinate to the rights to payment of "Superior Indebtedness" (as defined in section 14–2 of the Debenture Indenture), including Applicant's guarantee of the Bonds. The Debentures are unsecured direct obligations of the Applicant, while the Bonds are secured by a mortgage on the facilities financed thereby (the "Project") and the Applicant's guarantee of the Bonds.

6. Other than as specified in paragraph 5 hereof, the only material differences between the Debenture Indenture and the Bond Indenture, and among the rights of the holders of the securities issued thereunder, relate to dates of issue, aggregate principal amounts, interest rates, maturity and payment dates, redemption features (prices, dates and procedures), sinking fund provisions, procedures and approvals for action by certificate and bond holders, grace periods relating to events of default and certain covenants and provisions relating to merger and consolidation of the Applicant, the conduct of Applicant's business and financial affairs and the operation and maintenance of Applicant's property, including the Project. In addition, there are differences between the two Indentures related to the fact that the Applicant is not the primary obligor under the Bond Indenture. Certain provisions required by the Act are not contained in the Bond Indenture.

7. In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under the Bond Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by its application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than April 5, 1982, submit to the Commission his views of any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such requests, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after such date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–7075 Filed 3–15–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/501]

Integrated Services Digital Network (ISDN) Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 14 at 9:00 a.m. in Room 1105 of the Department of State, 2201 C Street, N.W., Washington, D.C. This Working Party deals with the evolution of ISDN as it is being considered by CCITT Study Group XVIII.

The agenda for the April 14 meeting will include consideration of the following:

1. Report of Study Group XVIII ISDN Group of Experts meeting, Munich, February 1982.

2. Consideration of U.S. positions with respect to Draft Recommendations I.xxx and I.xxy.

3. Consideration of ISDN related contributions of Study Groups (VII and XI).

4. Any other Business.

This meeting is scheduled for all day and may last to 5:30 p.m. The report on the Munich meeting will include a semi-tutorial presentation and explanation of the results of that meeting.

Selected documents from the Munich meeting will be distributed to members of the ISDN Working Party in advance of this meeting.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is therefore requested that prior to April 14, 1982 members of the general public who plan to attend the meeting inform Mr. Richard Howarth, Office of International Communications Policy, Department of State, telephone (202) 632–1007, of their intention. All non-Governmental attendees must use the C Street entrance to the building.

Dated: March 5, 1982.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 82–7070 Filed 3–15–82; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM-8/498]

Presidential Commission on Broadcasting to Cuba; Partially Closed Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended by Pub. L. 94–409 section 5(c), notice is hereby given that the Presidential Commission on Broadcasting to Cuba will meet in open and closed sessions on Tuesday, March 30, 1982.

The open session will convene on March 30 at 2:00 p.m. in Room 1406, N.S., Department of State, Washington, D.C.

The open session of the Commission meeting will allow public discussion of programming, technical, and other aspects of radio broadcasting to Cuba. The general public attending the open session may participate in the discussion or submit statements subject to instructions of the Chairman.

The purpose of the closed session is to discuss aspects of radio broadcasting to Cuba that should not be prematurely disclosed to the public. Documents classified under the provisions of Executive Order 12065 will also be discussed. Accordingly, it has been determined that it is in the public interest to close this meeting pursuant to 5 U.S.C. 552b(1) and 5 U.S.C. b(c)(9).

Because entry to the State Department is controlled, members of the public who wish to attend the open session should contact Mr. Peter P. Lord in advance in order to provide their names and affiliation and to facilitate their attendance. His telephone number is (202) 632–7482. Attendees should use the Diplomatic Entrance located on C Street N.W. between 21st and 23rd Streets.

Ambassador George W. Landau,

Executive Director, Presidential Commission on Broadcasting to Cuba

March 5, 1982.

[FR Doc. 82–7067 Filed 3–15–82; 8:45 am]

BILLING CODE 4710–29–M

[Public Notice CM-8/499]

Presidential Commission on Broadcasting To Cuba; Partially Closed Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended by Pub. L. 94–409, section 5(c), notice is hereby given that the Presidential Commission on Broadcasting to Cuba will meet in open and closed sessions on Friday, April 16, 1982.

The open session will convene on April 16 at 2:00 p.m. in Room 1406, N.S. Department of State, Washington, D.C.

The open session of the Commission meeting will allow public discussion of programming, technical, and other aspects of radio broadcasting to Cuba. The general public attending the open session may participate in the discussion or submit statements subject to instructions of the Chairman.

The purpose of the closed session is to discuss aspects of radio broadcasting to Cuba that should not be prematurely disclosed to the public. Documents classified under the provisions of Executive Order 12065 will also be discussed. Accordingly, it has been determined that it is in the public interest to close this meeting pursuant to 5 U.S.C. 552b(1) and 5 U.S.C. b(c)(9).

Because entry to the State Department is controlled, members of the public who wish to attend the open session should contact Mr. Peter P. Lord in advance in order to provide their names and affiliation and to facilitate their attendance. His telephone number is (202) 632–7482. Attendees should use the Diplomatic Entrance located on C Street N.W. between 21st and 23rd Streets.

Ambassador George W. Landau,

Executive Director, Presidential Commission on Broadcasting to Cuba.

March 5, 1982.

[FR Doc. 82–7068 Filed 3–15–82; 8:45 am]

BILLING CODE 4710–29–M

[Public Notice CM-8/500]

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 March 31, 1982 in Room 6200, 02 and 04 of the Nassif Building, 7th and D Sts., S.W., Washington, D.C. 20590.

The purpose of the meeting will be to discuss the results of the Twenty-third Session of the Subcommittee on Containers and Cargoes, held at IMCO Headquarters, London, February 8–12, 1982. Particular comments will be directed to the Code of Safe Practice of Bulk Cargoes including the Appendix B entries for Ammonium Nitrate, Coal, Grains (Cereals) Direct Reduced Iron (DRI), Ferrosilicon, Charcoal and Seed Cake.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. John F. McAnulty, USCG (G–MHM), Wash., D.C. 20593. Tel: (202) 426–1577 or Capt. S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, N.Y. 10048. Tel: (202) 432–1280.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

March 8, 1982.

[FR Doc. 82–7069 Filed 3–15–82; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM-8/502]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 15, 1982 at 10:00 a.m. in Room 1205 of the Department of State, 2201 C Street, N.W., Washington, D.C. This Study Group deals with matters in telecommunications relating to the development of international digital data transmission.

The agenda for the April 15 meeting will include consideration of the following:

1. Report of the November 1981 meeting of Study Group XVII.

2. Report of the December 1981 meeting of Study Group VII Working Parties 1 and 2 of ISDN subjects.

3. Report of February 1982 meeting of Study Group XVIII Meeting of Experts on ISDN.

4. Consideration of delayed contributions for the meeting of Study Group VII Working Parties 1, 2 (non-ISDN), and 4.

5. Any other business.

Members of the general public may attend the meeting and join in the discussion subject to the instruction of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is therefore requested that prior to April 15, 1982 members of the general public who plan to attend the meeting inform Mr. Richard Howarth, Office of International Communications Policy, Department of State, telephone (202) 632–1007, of their intention. All non-Governmental attendees must use the C Street entrance to the building.

Dated: March 5, 1982.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 82-7071 Filed 3-15-82; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular; Public Debt Series No. 7-82]

March 11, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $5,250,000,000 of United States securities, designated Treasury Notes of March 31, 1984, Series Q-1984 (CUSIP No. 912827 MZ 2). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserves Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

1.2. If the interest rate determined in accordance with this circular is identical to the rate on an outstanding issue of United States notes, and the terms and conditions of such outstanding issue are otherwise identical to terms and conditions of the securities offered by this circular, this shall be considered an invitation for an additional amount of the outstanding securities and this circular will be amended accordingly. Payment for the securities in that event will be calculated on the basis of the auction price determined in accordance with this circular.

2. Description of Securities

2.1. The securities will be dated March 31, 1982, and will bear interest from that date, payable on a semiannual basis on September 30, 1982, and each subsequent 6 months on March 31 and September 30 until the principal becomes payable. They will mature March 31, 1984, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable in secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, March 17, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 16, 1982, and received no later than Wednesday, March 31, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount noncompetitive tenders received would absorb all or most of the

offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notifed if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Wednesday, March 31, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, March 29, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registration or assignments of the securities surrenderd. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignement should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-7152 Filed 3-12-82; 2:44 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 51
Tuesday, March 16, 1982

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 10, 1982.

TIME AND DATE: 10 a.m., Wednesday, March 17, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Valley Limestone Company, Docket No. LAKE 81–87–M; Petition for Discretionary Review (Issues include whether the judge erred in finding a violation of 30 CFR 56.9–37).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–389–82 Filed 3–12–82; 2:42 pm]

BILLING CODE 6820–12–M

2

FEDERAL TRADE COMMISSION

TIME AND DATE: 2 p.m., Monday, March 15, 1982.

PLACE: Room 532 (open); Room 540 (closed); Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: The Portions Open to Public:

(1) Oral Argument in Massachusetts Furniture and Piano Movers Association, Inc., Docket 9137.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Massachusetts Furniture and Piano Movers Association, Inc., Docket 9137.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information: (202) 523–1892; Recorded Message: (202) 523–3806.

[S–387–82 Filed 3–12–82; 9:15 am]

BILLING CODE 6750–01–M

3

LEGAL SERVICES CORPORATION

(Presidential Search Committee of the Board of Directors)

TIME AND DATE: 2 p.m.–5 p.m., Thursday, March 25, 1982.

PLACE: Legal Services Corporation, 733 15th Street, NW., eighth floor conference room 2, Washington, D.C.

STATUS OF MEETING: Open (Portion of the meeting will be closed to discuss a personnel matter under 45 CFR 1622.5(a)).

MATTERS TO BE CONSIDERED:

1. Procedures for Presidential Search.
2. Criteria for Presidential Search.
3. Personnel Matters (Closed).

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President; (202) 272–4040.

Date Issued: March 12, 1982.

Dan J. Bradley,

President.

[S–390–82 Filed 3–12–82; 3:55 pm]

BILLING CODE 6820–35–M

4

LEGAL SERVICES CORPORATION

(Board of Directors)

TIME AND DATE: 10 a.m.–5 p.m., Friday, March 26, 1982

PLACE: Legal Services Corporation, 733 15th Street, NW., eighth floor conference rooms 2 and 3, Washington, D.C.

STATUS OF MEETING: Open (Portion of the meeting will be closed to discuss a litigation matter under 45 CFR 1622.5(h)).

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes of March 4–5, 1982 Meeting.
3. Announcement of Committees.
4. Report on Congressional Activities.
5. Individual Committee Meetings for Organization and Orientation Purposes.
6. Staff Briefings:
   a. Budget/Financing Policy Overview;
   b. 1983 Budget Options;
   c. Detailed Financial Report Including Statement of Funds Available for fiscal year 1982—Antone G. Singsen;
   d. Office of Field Services—Clint Lyons.
7. Other Business.
8. Future Meeting Dates.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: John Meyer, Office of the President, (202) 272–4040.

Date issued: March 12, 1982.

Dan J. Bradley,

President.

[S–571–82 Filed 3–12–82; 8:45 am]

BILLING CODE 6820–35–M

5

POSTAL RATE COMMISSION

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 10 a.m., Wednesday, March 17, 1982.

PLACE: Conference Room 500, 2000 L Street, NW., Washington, D.C. 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Commission staff compensation policy. (Closed pursuant to 5 U.S.C. 552(b)(2)(6).)

CONTACT PERSON FOR MORE INFORMATION:

Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268; Telephone (202) 254–5614.

[S–388–82 Filed 3–12–82; 12:38 pm]

BILLING CODE 7715–01–M

federal register

Tuesday
March 16, 1982

Part II

Department of Labor

Mine Safety and Health Administration

Electric Cap Lamps; Telephones and Signaling Devices; Electrical Components and Headlights for Mobile Diesel-Powered Transportation Equipment

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 19

Electric Cap Lamps

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule and correction.

SUMMARY: This final rule amends the Mine Safety and Health Administration's (MSHA) regulations governing approval of electric cap lamps for use in underground mines. The rule permits MSHA to modify its cap lamp approval requirements so that MSHA can investigate cap lamps which have new features not addressed in the previous regulations. After investigating such lamps, MSHA will issue an approval only for those lamps that provide the same degree of protection as lamps meeting the previous requirements. In addition, the rule sets forth an alternative to the requirement that there be a safety device in cap lamps for preventing ignition of explosive atmospheres in the event the bulb is broken by permitting the lamp to be designed and constructed to prevent ignition if the bulb is broken. Further, this document corrects a printing error in the regulation.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Mulhern, Assistant Director for Safety, Office of Technical Support, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1590.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On May 16, 1980, MSHA published in the **Federal Register** (45 FR 32557) a proposed rule to amend the requirements for Electric Cap Lamps at 30 CFR 19.1(b). In the notice of proposed rulemaking, MSHA requested that written comments be submitted by July 15, 1980. Five commenters responded, none of whom requested a hearing.

II. Discussion of the Final Rule

Prior to this amendment, MSHA was limited to investigating and approving cap lamps which met the design, construction and test requirements specifically set forth in the previous regulations. As a result, the regulations restricted MSHA approval of cap lamps incorporating new technology. Under the final rule, MSHA may modify the design, construction or test requirements of the regulation to allow investigation of devices which have new features not previously considered. Based on this investigation, if a new cap lamp design is safe for the intended use and provides at least the same degree of protection as lamps currently approved under the regulation, MSHA will issue an approval.

The final rule also amends the regulation to allow MSHA to investigate for approval cap lamps designed and constructed to prevent an ignition when the bulb is broken. Breakage of the lamp bulb and exposure of the filament can result in the ignition of explosive mixtures of methane and air in mines. The former regulation required that the cap lamp headpiece be provided with a safety device to prevent the ignition of explosive atmospheres in the event of bulb breakage. This amendment was not part of the proposal but is responsive to comments received. This final rule, therefore, provides manufacturers with increased flexibility in the construction and design of cap lamps and also provides an alternative for addressing the hazard related to bulb breakage.

The final rule has no effect on the devices which previously could be or have been approved under the regulation.

III. Discussion of the Comments

Four commenters supported the amendment as proposed. One commenter, however, raised several objections to the proposal. The commenter primarily objected that the proposal was subjective because it did not specify performance requirements and criteria to which manufacturers could design cap lamps. As a result, the commenter stated, there would be no safeguards to assure consistency in the performance and reliability of cap lamps investigated for approval. This commenter also suggested that user confidence could thus be adversely affected.

MSHA has carefully considered these objections, as well as all the other comments on the proposal. Based on these comments and MSHA's experience under its other approval and certification regulations, MSHA has retained in the final rule, with minor revision, the provisions of the proposal related to the design, construction and testing of newly developed cap lamps. However, in response to the objection to the proposal, the final rule also includes an alternative general requirement which reflects cap lamp technology that MSHA is aware of at this time.

As discussed in the preamble to the proposed rule, an essential purpose of this rule is to allow MSHA to investigate, test and approve cap lamps which incorporate technological improvements or new designs which could result in increased health and safety for miners. MSHA does not believe that this purpose can be fully accomplished only by adding new specific requirements and criteria to the regulations. While additional specific requirements and criteria would be applicable to some cap lamps, they may not be appropriate for others, particularly as technology continues to advance. As a result, MSHA could be prevented from investigating new cap lamps with innovative design or construction. A recent example illustates this principle.

Before this amendment, § 19.7(a) required that the headpiece of a cap lamp be provided with a safety device to prevent the ignition of explosive mixtures of methane and air when the bulb glass surrounding the filament is broken. Generally, cap lamp designs have met this requirement with a device that ejects the bulb from its socket when the cap lamp lens is broken. In the past few years, cap lamps have been constructed with material resistant to breakage and designed to prevent exposure of the filament which could cause an ignition. In the event the bulb is broken, the filament would also be broken or deenergized. This new design addresses the hazard of ignition without the use of a safety device to prevent ignition when the bulb is broken. However, because the regulation did not previously take into account this type of design and construction, MSHA was not able to investigate these cap lamps for approval. The final rule removes this restriction. MSHA believes that this revision gives manufacturers notice of an additional requirement which they may use in the design and construction of cap lamps. At the same time, the revision is general enough to allow flexibility in developing the materials and designs which may satisfy the requirement.

As stated earlier, the commenter who raised objections to the proposal was concerned that this rule could result in a loss of user confidence in MSHA-approved cap lamps since it permits MSHA to modify its approval requirements. Based upon experience under other approval regulations, MSHA does not anticipate such a result, nor any problems with respect to inconsistency in performance. When investigating cap lamps under this provision, MSHA will use the previous requirements to develop appropriate new requirements or tests for the new lamps. MSHA will also use the previous requirements as a basis for evaluating whether a new cap lamp design is as

safe as designs which are currently approved.

The purpose of this final rule is to assure that safe, modern equipment is available for use in underground mines, which will enhance the safety and health of the miners. Upon the effective date of this rule, MSHA will investigate applications for approval of newly designed cap lamps so that, if they meet MSHA requirements, they can be approved for use as soon as reasonably possible.

This publication also corrects a printing error in the regulation at § 19.9(b) (Bulb life). Section 19.9(b), as originally published, required that at least 92 percent of the bulbs tested have a life of at least 150 hours and that the average life of all bulbs tested be at least 200 hours. The requirement of 150 hours remained correctly published until the 1977 edition of the Code of Federal Regulations (CFR) which misstated the minimum bulb life requirement as 250 hours. The Approval and Certification Center has been testing bulbs using the original, correct figure of 150 hours. This document makes the technical change of reinstating the correct figure of 150 hours in the next edition of the CFR.

IV. Regulatory Impact Analysis

MSHA has determined that this rule does not meet any of the criteria for a major rule under Executive Order 12291, 46 FR 13193 (February 19, 1981), and therefore a Regulatory Impact Analysis is not necessary. The rule removes restrictions in MSHA's Approval and Certification requirements for cap lamps. It includes no new requirements and will result in no additional costs.

V. Regulatory Flexibility Analysis

This rule is exempt from the requirements of the Regulatory Flexibility Act (Act) because it was proposed prior to January 1, 1981. However, consistent with the purposes of that Act, MSHA has evaluated whether this action will have a significant economic impact on a substantial number of small entities. MSHA has determined that no economic impact will result from this action because this rule removes certain restrictions in the current regulation and thereby lessens the regulatory burden on the affected public.

VI. Paperwork Reduction Act

This rule does not contain an information collection requirement.

VII. Drafting Information

The principal persons responsible for the preparation of this final regulation are: Salwa El Bassioni and Kenneth Sproul, Technical Support, MSHA; Herbert P. LeVan, Office of Standards, Regulations, and Variances, MSHA; and Barry F. Wisor, Office of the Solicitor, Department of Labor.

Dated: March 11, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

PART 19—ELECTRIC CAP LAMPS

30 CFR Part 19 is amended as follows:

1. Section 19.1(b) is revised and an authority note is added following the section to read as follows:

§ 19.1 Purpose.

* * * * *

(b) Any electric cap lamp that meets the requirements set forth in this part will be termed "permissible" by MSHA and, if actively marketed, will be listed as such in publications relating to permissible electric cap lamps. MSHA will test only electrical equipment that in the opinion of its qualified representatives is constructed of suitable materials, is of good quality workmanship, is based on sound engineering principles, and is safe for its intended use. MSHA reserves the right to modify design, construction, and test requirements to obtain the same degree of protection as provided by the tests described in this part.

* * * * *

Note.—Paragraph (b) of this section is issued under the authority of Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811). All other paragraphs in this section continue under the original authority.

2. Section 19.7(a) is revised and an authority note is added following the section to read as follows:

§ 19.7 Protection against explosion hazard.

* * * * *

(a) *Safety device or design.* The headpiece shall have a safety device to prevent the ignition of explosive mixtures of methane and air if the bulb glass surrounding the filament is broken. Alternatively, if the lamp is designed and constructed to prevent the ignition of explosive mixtures of methane and air by protecting the bulb from breakage and preventing exposure of the hot filament, no safety device is required.

* * * * *

Note.—Paragraph (a) of this section is issued under the authority of Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811). All other paragraphs in this section continue under the original authority.

3. Section 19.9 is corrected by revising paragraph (b) to read as follows:

§ 19.9 Performance.

* * * * *

(b) *Bulb life.* The average life of the bulbs shall be not less than 200 hours, and at least 92 percent of the bulbs shall have a life of 150 hours. * * *

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[FR Doc. 82-7056 Filed 3-15-82; 8:45 am]

BILLING CODE 4510-43-M

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30 CFR Part 23

Telephones and Signaling Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This rule amends the Mine Safety and Health Administration's (MSHA) regulations governing approval of telephones and signaling devices for use in underground mines. The amendment enables MSHA to approve telephones and signaling devices which are designed to operate from a mine power or lighting circuit if they are equipped with a standby power source. Because of hazards associated with operation of telephones and signaling devices from mine power and lighting circuits, the previous rule permitted the approval of only battery powered devices. Developments in communications technology have now eliminated such hazards. The final rule permits approval of improved equipment incorporating new technology.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Mulhern, Assistant Director for Safety, Office of Technical Support, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1590.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On August 22, 1980, MSHA published in the **Federal Register** (45 FR 56312) a proposal to amend 30 CFR 23.2 and 23.7 to permit the approval of telephones and signaling devices operated from mine power or lighting circuits if they are provided with a standby power source. Interested persons were given until October 21, 1980, to submit comments. MSHA received four comments on the proposal, none of which requested a hearing.

II. Discussion of Final Rule

Prior to this amendment, the definition of a "signaling device" in the previous

regulation permitted MSHA to approve only telephones and signaling devices which were designed to operate independently of the mine power or lighting circuits. MSHA could therefore approve only battery powered devices. The final rule removes this design restriction. In addition, to assure continuous communication capabilities in case the power fails or is cut off, the final rule requires that line powered telephones and signaling devices be equipped with a standby power source, e.g., batteries. Although all commenters supported MSHA's proposal, they also submitted some suggestions.

With respect to the requirement for a standby power source, one commenter pointed out that the proposal could be interpreted to require a standby power source in each unit of a telephone or signaling device system. The agency did not intend to exclude the use of a centralized standby power source for telephone or signaling device systems. Therefore, the language of the final rule is clarified to include the use of a centralized standby power source. MSHA has also made other minor revisions to improve the clarity of this section of the final rule.

Another commenter was concerned about the application of the proposed rule to radio or cable remote controls used in mining equipment. This final rule has no effect on the approval of cable remote control systems. Cable remote control systems will continue to be treated as components for use on or with machines and approved under 30 CFR Part 18. Radio remote control systems will continue to be approved under Part 23.

Several commenters recommended that MSHA require that telephones and signaling devices or systems be equipped with a warning system that would notify mine operators if the batteries of the standby power source become depleted. One of these commenters further suggested that the rule require the maintenance of standby batteries at no less than 75 percent of their rated capacity and an audible warning if the capacity drops below this level. MSHA agrees with the commenters that the standby power sources required for line powered telephones and signaling devices perform an important safety function. Without standby power sources, if the mine power were interrupted, the telephones and signaling devices might not operate when most needed.

MSHA, however, does not believe that the maintenance of standby power sources is a proper subject for additional specific criteria under this approval regulation. Proper maintenance of telephones and signaling devices, including standby power sources, is the responsibility of the equipment user, that is, the mine operator. This compliance responsibility is appropriately addressed in existing regulations in 30 CFR Parts 57 and 75 which require electrical equipment, including telephones and signaling devices, together with the necessary standby power sources, to be maintained in permissible and safe operating condition. However, because the maintenance of standby power sources is so essential to the safe use of line powered telephones and signaling devices, the final rule includes a general requirement that manufacturers furnish instructions to operators concerning the proper maintenance of standby power sources.

MSHA believes that an important goal of this regulation is to provide manufacturers with the flexibility necessary to design and construct improved equipment which incorporates new technology, and thereby results in increased miner health and safety. Toward this end, MSHA especially encourages manufacturers to develop any appropriate features for standby power sources, including, but not limited to, low capacity warning devices, which would improve the maintenance and reliability of such power sources.

The ultimate purpose of this final rule is to make safe, modern equipment available for use in underground mines, which will enhance the safety and health of the miners. Upon the effective date of this rule, MSHA will promptly investigate applications for approval of newly designed telephones and signaling devices so that, if they meet MSHA requirements, they can be approved for use a soon as reasonably possible.

III. Regulatory Impact Analysis

MSHA has determined that this rule does not meet any of the criteria for a major rule under Executive Order 12291 and therefore a Regulatory Impact Analysis is not necessary. The rule removes restrictions in MSHA's Approval and Certification requirements for telephones and signaling devices. It includes no new requirements and will result in no additional costs.

IV. Regulatory Flexibility Analysis

This rule is exempt from the requirements of the Regulatory Flexibility Act (Act) becuause it was proposed prior to January 1, 1981. However, consistent with the purposes of that Act, MSHA has evaluated whether this action will have a significant economic impact on a substantial number of small entities. MSHA has determined that no economic impact will result from this action because this rule removes certain restrictions in the current regulation and thereby lessens the regulatory burden on the affected public.

V. Paperwork Reduction Act

This rule does not contain an information collection requirement.

IV. Drafting Information

The principal persons responsible for preparation of this rule were: Salwa El Bassioni and Kenneth Sproul, Technical Support, MSHA; Herbert P. LeVan, Office of Standards, Regulations and Variances, MSHA; and Inga A. Watkins and Barry F. Wisor, Office of the Solicitor, Department of Labor.

Dated: March 11, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

PART 23—TELEPHONE AND SIGNALING DEVICES

30 CFR Part 23 is amended as follows:

1. Section 23.2(f) is revised and an authority note is added following the section to read as follows:

* * * * *

§ 23.2 Definitions.

(f) "Signaling device." As used in this part, a signaling device is one that gives visual or audible signals.

* * * * *

Note.—Paragraph (f) of this section is issued under the authority of Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811). All other paragraphs in this section continue under the original authority.

2. Section 23.7(g) is added and an authority note is added following the section to read as follows:

§ 23.7 Specific requirements for approval.

* * * * *

(g) Line powered telephones and signaling devices or systems shall be equipped with standby power sources that have the capacity to enable the devices or systems to continue functioning in the event the line power fails or is cut off. Manufacturers shall furnish instructions for the proper maintenance of standby power sources.

Note.—Paragraph (g) of this section is issued under the authority of Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C 811). All other

paragraphs in this section continue under the original authority.

[FR Doc. 82-7057 Filed 3-15-82; 8:45 am]
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30 CFR PART 36

Electrical Components and Headlights for Mobile Diesel-Powered Transportation Equipment

AGENCY: Mine Safety and Health Administration (MSHA), Labor.
ACTION: Final rule.

SUMMARY: This final rule amends the Mine Safety and Health Administration's (MSHA) regulations governing the approval of mobile diesel-powered transportation equipment for use in gassy metal and nonmetal mines. The final rule removes certain design restrictions and allows the use of permissible electric-powered accessories on mobile diesel-powered transportation equipment to recognize improvements in technology.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Mulhern, Assistant Director for Safety, Office of Technical Support, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virgina 22203, (703) 235-1590.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On August 22, 1980, MSHA published in the **Federal Register** (45 FR 56308) a proposal to amend 30 CFR Part 36 as to the construction, design and test requirements for approval and certification of mobile diesel-powered transportation equipment for gassy metal and nonmetal mines. Sixty days were allowed for public comment. Comments were received from five interested parties. No public hearings were requested.

II. Summary of the Rule and Discussion of Comments

The previous regulation prohibited the use of all electrical devices, except self-contained battery-powered headlights, on permissible mobile diesel-powered transportation equipment used in gassy metal and nonmetal mines. Because electric-powered devices have been produced which, MSHA believes, no longer present a hazard as an ignition source in gassy mines, the final rule removes this prohibition. As a result of this change, MSHA will investigate, for approval and certification, mobile diesel-powered transportation equipment containing (1) electrical components which satisfy the requirements of 30 CFR Part 18 (Electric Motor-Driven Mine Equipment and Accessories), Part 20 (Electric Mine Lamps Other Than Standard Cap Lamps), or Part 27 (Methane-Monitoring Systems); or (2) electrical systems which meet the requirements of either Part 18 or 27.

The previous regulation also restricted the use of headlight units on mobile diesel-powered transportation equipment to those that are self-contained, locked or sealed units containing the battery. This final rule deletes this restriction. MSHA recognizes that certain lighting systems may illuminate more effectively than self-contained battery-powered units and may provide equivalent protection against explosion hazards. Therefore, under this regulation, manufacturers may submit for approval equipment that provides either engine-driven lighting systems which meet the requirements of Part 18, or self-contained headlights that are approved under Part 20. This rule retains, with minor revisions for clarity, two requirements found in the previous regulation concerning headlights: the headlight units must be mounted on the mobile equipment and protected from external damage; and at least one headlight unit must be provided on the front and rear of each piece of equipment.

Section 36.51, which required that headlight units be inspected and tested according to the criteria contained in Part 20, is revoked because under the final rule, the applicable criteria to be met are referenced in §§ 36.32 and 36.33. In addition, the rule renumbers the retained paragraphs and changes the section headings to assure that all provisions of the regulation are internally consistent.

These changes are made to update MSHA's regulations to recognize improvements in technology and will allow operators of gassy metal and nonmetal mines to obtain electric-powered systems or components for diesel equipment. Miners in such mines using diesel haulage equipment will also benefit by having improved equipment which will result in safer working conditions. Moreover, the added flexibility in the rule is intended to encourage research and development of improved devices for use in gassy mine atmospheres.

The previous regulation prohibited the use of electric starting devices on diesel equipment and the proposal expressly retained this prohibition. MSHA did, however, specifically solicit comment on this issue. The final rule retains the prohibition against electric starting. Although the commenters favored use of electric starting, they did not submit sufficiently detailed information to support a change in the regulation at this time. In addition, the Agency is currently without an adequate information base to establish appropriate technical requirements.

However, in response to the commenters' concerns, MSHA will continue to closely monitor the progress of permissible electric starting systems to determine if they are safe. The Agency will also gather data to develop adequate test criteria for electric starting systems.

Another commenter asked whether the proposed rule would allow the installation of intrinsically safe system warning lights and intrinsically safe, electrically-operated liquid level sensors for water scrubber systems. The final rule specifically allows the use of electrical components that are certified or approved under Part 18 and the use of electrical systems that meet the requirements of Part 18. A commenter asked whether the proposed revisions would also be applicable to Part 32 (Mobile Diesel-Powered Equipment for Noncoal Mines). Part 32 is applicable to underground metal and nonmetal mines in general, while the more stringent criteria in Part 36 apply specifically to gassy metal and nonmetal mines. The final rule affects only Part 36.

One commenter requested clarification of the types of electrifically powered accessories that may be approved for use on diesel equipment. The final rule, like the proposal, provides that any electrical component that has been certified or approved under Part 18, Part 20, or Part 27 is acceptable for installation under this regulation. Any electrical system which meets the requirements of Part 18 or Part 27 is also acceptable.

One commenter was concerned about the possibility of delay in processing equipment approvals because of the potential increase in applications following these regulatory changes. MSHA does not anticipate such delays and will promptly investigate applications for equipment approval and certification under Part 36, so that, if they meet MSHA requirements, they can be approved for use as soon as reasonably possible.

III. Regulatory Impact Analysis

MSHA has determined that this rule does not meet any of the criteria for a major rule under Executive Order 12291, and therefore a Regulatory Impact Analysis is not necessary. The final rule removes restrictions in MSHA's approval and certification requirements

for mobile diesel-powered transportation equipment. It includes no new requirements and will result in no additional costs.

IV. Regulatory Flexibility Analysis

This rule is exempt from the requirements of the Regulatory Flexibility Act (Act) because it was proposed prior to January 1, 1981. However, consistent with the purposes of that Act, MSHA has evaluated whether this action will have a significant economic impact on a substantial number of small entities. MSHA has determined that no economic impact will result from this action because this rule removes certain restrictions in the current regulation and thereby lessens the regulatory burden on the affected public.

V. Paperwork Reduction Act

This rule does not contain an information collection requirement.

VI. Drafting Information

The principal persons responsible for preparation for this final rule are: George J. Dvorznak, Approval and Certification Center; Herbert P. Levan, Office of Standards, Regulations and Variances, MSHA, and Mitchell M. Eskenazi, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Dated: March 11, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

PART 36—MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT FOR GASSY NONCOAL MINES AND TUNNELS

30 CFR Part 36 is amended as follows:

1. Section 36.32 is revised and an authority note is added following the section to read as follows:

§ 36.32 Electrical components and systems.

(a) Electrical components on mobile diesel-powered transportation equipment shall be certified or approved under Part 18, 20 or 27 of this chapter, as applicable, and shall bear the certification number assigned by MSHA.

(b) Electrical systems on mobile diesel-powered transportation equipment shall meet the requirements of Part 18 or 27 of this chapter, as applicable.

(Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811))

2. Section 36.33 is amended by removing paragraphs (a) and (b); revising paragraphs (c) and (d) and redesignating them as paragraphs (a) and (b); and adding an authority note following the section to read as follows:

§ 36.33 Headlights and fixtures.

(a) Headlights and lighting fixtures on mobile diesel-powered transportation equipment shall be protected from external damage by recessing them in the equipment frame, enclosing them within a shield of substantial construction, or by any other method that provides equivalent protection.

(b) Mobile diesel-powered transportation equipment shall be equipped with at least one headlight on each end.

(Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811))

§ 36.51 [Removed]

3. Section 36.51 is removed.

(Sec. 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811))

[FR Doc. 82–7055 Filed 3–15–82; 8:45 am]

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federal register

Tuesday
March 16, 1982

Part III

Department of Labor

Public Contracts Property Management; Small Business and Small Disadvantaged Business Program; Final Rule

DEPARTMENT OF LABOR

41 CFR Part 29-1

Public Contracts Property Management; Small Business and Small Disadvantaged Business Program

AGENCY: Labor Department.

ACTION: Final rule.

SUMMARY: This rule revises the Department of Labor Procurement Regulations. (DOLPR) to incorporate current policies, procedures, and contract clauses regarding the Department's small business and small disadvantaged business program, and establishes policies and procedures for its Labor Surplus Area Program and Minority Business Enterprises Program. It formally assigns to the Office of Small and Disadvantaged Business Utilization, under the Office of the Under Secretary, responsibility for administering and managing the small business, small disadvantaged business, labor surplus area, and minority business programs; updates procedures for carrying out the goals of the programs; and sets out the duties of official personnel to be involved in the programs.

EFFECTIVE DATE: April 15, 1982.

FOR FURTHER INFORMATION CONTACT: Katherine M. Lee, Office of Small and Disadvantaged Business Utilization, 202-523-9151.

SUPPLEMENTARY INFORMATION: This rule revises the Department of Labor Procurement Regulations (DOLPR) to incorporate current policies, procedures, and contract clauses regarding the Department's small business and small disadvantaged business program, consistent with Pub. L. 95-507 and subsequent issuances by the Office of Federal Procurement Policy (OFPP) and the General Services Administration (GSA), and establishes policies and procedures for its Labor Surplus Areas Program and Minority Business Enterprises Program. It formally assigns to the Office of Small and Disadvantaged Business Utilization, under the Office of the Under Secretary, responsibility for administering and managing the programs under Sections 8 (small disadvantaged business) and 15 (small business and labor surplus areas business) of the Small Business Act, as amended, and the minority business program required by Executive Order 11458 and 11625 dated March 5, 1969 and October 13, 1971, respectively; updates procedures for carying out the goals of the programs; and sets out the duties of official personnel to be involved in the programs.

On May 24, 1978, Pub. L. 95-507 was enacted, amending the Small Business Act and the Small Business Investment Act of 1958. This new law strengthened the (1) socially and economically disadvantaged business (8(a)) program, (2) small business set-aside program, and (3) small business subcontracting program. It also require the establishment of an Office of Small and Disadvantaged Business Utilization (OSDBU) within each Federal agency.

In compliance with Pub. L. 95-507, the Department of Labor (DOL) established, by Secretary's Order 10-79, its Office of Small and Disadvantged Business Utilization in July 1979. The policies and procedures prescribed in this final rule revise the Department of Labor Procurement Regulations (DOLPR) to comply with the above law and implementing issuances for carrying out the preferential programs.

A proposed rule was published at 45 FR 83548-83554 (December 19, 1980), and invited comments for 60 days ending February 17, 1981. Only the Small Business Administration (SBA) commented. The following summarizes SBA's comments and DOL's action.

The Small Business Administration offered two general comments: (1) The term "small and disadvantaged business" and used throughout the regulations, rather than small business and small disadvantaged business," may be misinterpreted to mean that large disadvantaged businesses may avail themselves of the assistance delineated under Pub. L. 95-507. We are accepting SBA's comments and are changing the term "small and disadvantaged business" to "small business and small disadvantaged business" where appropriate. (2) The regulations should include the regulations elements of OFPP Policy Letters 80-1 and 80-2, in particular, the subcontracting procedures, notifications to SBA regarding contract awards which include subcontracting plans, and the handling of contracting plans in contracts for commercial products. We do not agree with SBA that such instructions should be published in the Code of Federal Regulations (CFR); rather they should be covered in internal procedures. We are including the OFPP instructions in the Procurement Section of the Department of Labor Manual Series.

The Small Business Administration made several specific comments as follows:

1. The definition of a "small business" (§ 29-1.701) should emphasize that "the primary concern is not the definition of a small business but it is the standard industrial classification code number that the contracting officer selects for the acquisition." SBA suggested further that we use the definition for disadvantaged business concerns which is stated in OFPP Policy Letter 80-2, rather than the definition in Pub. L. 95-507, as the latter is somewhat restrictive to 8(a) concerns.

Response: We have determined that because the definition of small business is provided in the Federal Procurement Regulations (FPR), 41 CFR 1-1.701, there is no need for its inclusion in the DOLPR. For this same reason, we are not adopting § 29-1.701(a), entitled "Definitions" as it was written in the proposal. However, because the FPR does not provide a definition for "small disadvantaged business," we are adopting the definition as used in OFPP Policy Letter 80-2 for § 29-1.701 as suggested by SBA.

2. It is not clear in § 29-1.704-4(b)(7) as to who makes the final determination concerning eligibility of small disadvantaged business concerns.

Response: This concern is covered in the revision as discussed in paragraph D below.

3. The Small Business Administration's other comments were of a clerical nature; appropriate actions have been taken.

In addition to responding to SBA comments, the Department determined that certain areas of the proposed rule needed clarification and that certain data was too detailed for the CFR. Such information should be covered in internal procedures. Therefore, we have made the following administrative changes in this final rule.

A. We are deleting the term "labor surplus area" concerns from the provision of Subpart 29-1.7, inasmuch as provisions for labor surplus area concerns are provided in the new Subpart 29-1.8. However, since the law does not provide separate provisions for businesses owned by women, and since provisions for small women-owned business may be covered under the small business program, we are adopting the term "small women-owned business" concerns in the final DOLPR.

B. We are deleting § 29-1.704-1(c) defining additional responsibilities for the Director, OSDBU, since these responsibilities concern the Department only.

C. Sections 29-1.704-2 concerning DOL Agency heads, and § 29-1.704-3 concerning DOL procuring activities, have been revised to redefine and reallocate responsibilities.

D. Section 29-1.704-4, which defines responsibilities for the small and disadvantaged business specialists has

been revised in its entirety. Paragraphs (a) and (b) of the section have been deleted and new paragraphs (a)–(i) have been substituted in lieu thereof to identify only those duties applicable to the public. Other duties are identified in internal procedures.

E. Sections 29–1.704–50—"Goals" and 29–1.704–51—"Reports" have been removed. A new § 29–1.704–50 entitled "Reports" has been substituted in lieu thereof. The new section is redefined and incorporates the goals requirement.

F. We are deleting §§ 29–1.706–1 and 29–1.706–3 since these provisions are covered by 41 CFR 1–1.706.

G. We are deleting § 29–1.710–3 entitled "Required Clauses" since this is covered by 41 CFR 1–1.710.

H. Other minor technical and clarifying changes also have been made.

Effective Date. This rule shall be effective upon April 15, 1982.

Drafting Information: This document was prepared by Mrs. Katherine M. Lee, of OSDBU, under the direction and control of WALTER C. TERRY, Director, Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary.

Regulatory Impact Analysis Under Executive Order 12291

The Department of Labor has determined that the final rule in this document is not a major regulation that requires the preparation of a regulatory impact analysis within the meaning of Executive Order 12291. This is because the rule is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because this rule was issued in proposed form prior to January 1, 1981, the Department is not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act (Section 3(a) of Pub. L. No. 96–354, 91 Stat. 1164, 5 U.S.C. 601 *et seq.*). See Note at 5 U.S.C. 603.

Accordingly, Part 29–1 of Title 41 of the Code of Federal Regulations is amended by revising Subpart 29–1.7; by adding two new entries, Subparts 29–1.8 and 29–1.13; and by amending the table of section headings and the authority; to read as follows:

PART 29–1—GENERAL

* * * * *

Subpart 29–1.7—Small Business and Small Disadvantaged Business Concerns

Sec.

29–1.700 General.
29–1.701 Definitions.
29–1.702–50 General policy.
29–1.704 Agency program direction and operation.
29–1.704–1 DOL headquarters.
29–1.704–2 DOL agency heads.
29–1.704–3 DOL procuring activities.
29–1.704–4 Small and disadvantaged business specialists.
29–1.704–5 Responsibilities of the procurement office.
29–1.704–50 Reports.
29–1.706–50 Procurement set-asides for small business when an SBA representative is not available.
29–1.706–54 Small business set-asides for proposed procurements.
29–1.708 Certificate of competency program.
29–1.710 Subcontracting with small and small disadvantaged business concerns.
29–1.710–1 General.
29–1.713 Contracts with the Small Business Administration.
29–1.713–1 Authority.
29–1.713–2 Policy.
29–1.713–50 Procurement of technical requirements.

Subpart 29–1.8—Labor Surplus Area Concerns

29–1.802 Labor surplus area policy.
29–1.802–1 General policy.

* * * * *

Subpart 29–1.13—Minority Business Enterprise

29–1.1300 Scope of subpart.
29–1.1302 Agency programs.
29–1.1302–50 DOL implementation.

Authority. 63 Stat. 389 (40 U.S.C. 486(c)); 80 Stat. 379 (5 U.S.C. 301); sec. 202, Pub. L. 95–507, 92 Stat. 1761 (15 U.S.C. 637(a)); sec. 221, Pub. L. 95–507, 92 Stat. 1770 (15 U.S.C. 644).

* * * * *

Subpart 29–1.7—Small Business and Small Disadvantaged Business Concerns

§ 29–1.700 General.

This subpart sets forth the responsibilities and policies for implementing a Small Business and Small Disadvantaged Business Program, including small women-owned business, within the Department of Labor.

§ 29–1.701 Definitions.

(a) The term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act, as amended (15 U.S.C. 632), and relevant regulations promulgated pursuant thereto (13 CFR Part 121–3–8 and 41 CFR (FPR) 1–1.701–1).

(b) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(1) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

(c) The term "socially disadvantaged individuals" shall mean those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(d) The term "economically disadvantaged individuals" shall mean those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(e) The term "socially and economically disadvantaged business groups" shall include but is not limited to, Black Americans, Hispanic Americans, Native Americans and Asian-Pacific Americans. The term "Native Americans" shall mean American Indians, Eskimos, Aleuts and native Hawaiians. The term "Asian-Pacific Americans" shall mean U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, or Taiwan.

(f) Other individuals may qualify as socially and economically disadvantaged under procedures which have been separately established by the Small Business Administration at 13 CFR 124.1–1(c)(3)(iv).

(g) The term "DOL" shall mean the U.S. Department of Labor.

(h) The term "OSDBU" shall mean the DOL Office of Small and Disadvantaged Business Utilization.

(i) The term "SDBS" shall mean the small and disadvantaged business specialist within individual DOL procuring activities.

§ 29-1.702-50 General policy.

The Department of Labor (DOL) fully supports the Government's small business and small disadvantaged business program for placing a fair proportion of its private sector purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs, and construction) with small business and small disadvantaged business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of equipment, supplies, and services that are within their capabilities.

§ 29-1.704 Agency program direction and operation.

§ 29-1.704-1 DOL headquarters.

(a) The Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Under Secretary, is responsible for the overall management and direction of the DOL Small Business and Small Disadvantaged Business Program. Any changes made in the program will originate in and be the responsibility of this office. All comments or inquiries concerning the program should be directed to the Director, OSDBU.

(b) The responsibilities of the Director, OSDBU, include, but are not limited to, developing standards, procedures and operating guidelines for effective administration of the program; developing, in coordination with agency heads and the Small Business Administration (SBA), departmental goals; reviewing and evaluating agency objectives, procedures, and accomplishments, and recommending changes or corrective actions where appropriate; exercising functional authority over SDBS in matters relating to small business and small disadvantaged business; advising the Under Secretary and other DOL officials on matters relating to the program; and representing DOL before other Government agencies on matters primarily affecting small business and small disadvantaged business concerns.

§ 29-1.704-2 DOL Agency heads.

Each Agency head within the Department of Labor is responsible for insuring that all policies, procedures, and regulations pertaining to the Department's small business and small disadvantaged business program are effectively implemented at all operational levels under his/her jurisdiction. Each Agency head shall develop annual advance procurement plans in order to establish aggressive small business and small disadvantaged business goals. Such plans shall be incorporated into and reconciled with the final annual advance procurement plan which is to be submitted to the Department's Office of the Comptroller by October 1 of each fiscal year.

§ 29-1.704-3 DOL procuring activities.

(a) The head of each DOL procuring activity, including regional officials, is responsible for the effective implementation and success of the Department's small business and small disadvantaged business program within his/her respective activity. Such individual shall take action to assure that program personnel, as well as contracting personnel, take maximum practicable action to increase the level of participation by small business and small disadvantaged business concerns in DOL procurement activities.

(b) Each head of procuring activities shall, in consultation with the Director, OSDBU, appoint by name and in writing, a qualified, senior level, small and disadvantaged business specialist (SDBS). While SDBS will normally be appointed from members of operating staffs, he/she shall be directly responsible to the appointing official in matters relating to small business and small disadvantaged business concerns and shall not be subject to the direction of his/her immediate line of procurement supervision or technical personnnel. The SDBS is not precluded from being assigned responsibility for the Labor Surplus Area Program or the Minority Business Enterprise Program as prescribed by FPR Subparts 1–1.8 and 1–1.13 respectively. The Office of Small and Disadvantaged Business Utilization shall be notified, in writing, of each appointment.

§ 29-1.704-4 Small and disadvantaged business specialists.

The small and disadvantaged business specialist (SDBS) shall serve as advisor to the head of his/her respective activity, and shall be the central point of contact for inquiries pertaining to the small business and small disadvantaged business program. The SDBS shall perform the following specific duties, as well as perform any additional functions as prescribed in the furtherance of the OSDBU program:

(a) Assist contracting and technical personnel in determining requirements which may be suitable for small business and small disadvantaged business set asides, to afford such firms an equitable opportunity to participate in the Department's procurement activities;

(b) Initiate action, in writing, to assure that adequate specifications are drawn, wherever possible, so as not to preclude participation by small business;

(c) Advise and assist small business in the proper procedure for participating in Government procurements;

(d) Assure that the subcontracting clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" as prescribed by the Temporary Regulation 50, Supplement 2, (45 FR 35809, May 28, 1980), is included in applicable solicitations;

(e) Participate in the evaluation of a prime contractor's small business subcontracting plan;

(f) Provide, upon request, small disadvantaged business concerns with a source list of firms solicited for any proposed procurements which contains the subcontracting clause entitled "Utilization of Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals";

(g) Assure that the procuring activity maintains a list of products and services which have been placed as repetitive small business set-asides; and

(h) Act as liaison between his procurement office, the contracting officer, and the appropriate SBA office is connection with Set-asides, certificates of competency, size classification, and any other matter in which the small business programs may be involved.

§ 29-1.704-5 Responsibilities of the procurement office.

(a) Each DOL procurement offfice shall take positive action to identify equipments, products and services where a potential exists for increasing the small and disadvantaged business concern's share of contract awards. Each procurement office shall, to the maximum extent feasible, arrange for the making of unilateral small business set asides on all contracting action which qualify. The procurement office shall take appropriate action to provide maximum advance and current information, assistance, and counseling of such nature and extent as to enable small business concerns to take full advantage of available DOL business opportunities and to compete for contracts.

(b) In accordance with FPR 1–2.205, each procurement office shall maintain bidders mailing lists. Each office shall insure that bidder's mailing lists identify small and disadvantaged business concerns and that all solicitations state

the applicable small business size standard and product classification.

§ 29–1.704–50 Reports.

The Director, OSDBU is required from time to time to inform the Congress, Small Business Administration, General Services Administration, and Department of Commerce of the Department's activities undertaken to comply with laws and regulations concerning the Federal small business and small disadvantaged business programs. Such reports include annual goals, progress reports, minority banking reports and other data as requested. Therefore, each DOL Agency must submit to OSDBU, as directed by the Director, OSDBU, annual procurement goals for each of the Department's small business and small disadvantaged business programs, quarterly reports concerning actual procurement actions and dollar values of awards for each of the small business and small disadvantaged business programs, quarterly minority banking reports, and any other report required by that office.

§ 29–1.706–50 Procurement set-asides for small business when an SBA representative is not available.

If no SBA representative is available, the SDBS shall initiate recommendations to the contracting officer for small business set-asides with respect to individual procurements or classes of procurements or portions thereof. The SDBS's set-aside recommendations shall be in writing and shall state the reasons for the type of set-aside recommended or the reasons for recommending against a set-aside. The recommendation unltimately shall be placed in the contract file.

§ 29–1.706–54 Small business set-asides for proposed procurements.

(a) All procurements under $10,000, awarded through small purchase procedures (except for mandatory services), shall be set aside for small business concerns when the contracting officer can expect to receive two or more offers from small business concerns who are competitive in market prices and in terms of quality and delivery of items being purchased.

(b) Each proposed procurement for construction estimated to cost between $10,000 and $2 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn, in accordance with the procedures of FPR 1–1.706–3 and DOLPR 29–1.706–3, only if found not to serve the best interest of the Government.

(c) Small business set-aside preferences for construction procurements in excess of $2 million shall be considered on a case-by-case basis.

(d) In addition to paragraphs (a) and (b) of this section, contracting officers are authorized to seek set-asides for all susceptible procurements including architectural engineering, research, development, and evaluation.

§ 29–1.708 Certificate of competency program.

The Small Business Administration has statutory authority (15 U.S.C. 637(b)(7)(A)) to certify the competency of any small business concern as to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity to receive and perform a specific Government contract.

§ 29–1.710 Subcontracting with small business and small disadvantaged business concerns.

§ 29–1.710–1 General.

(a) It is the Department of Labor's policy to support the Government's effort to enable small business concerns and small disadvantaged business concerns to be treated fairly as subcontractors performing work or rendering services to prime contractors or subcontractors under DOL contracts, and to assure that prime contractors and subcontractors carry out this policy.

(b) Procuring activities shall maintain lists of active prime contracts containing the clause entitled "Subcontracting Plan for Small Business and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

(c) The OSDBU shall review all solicitations that meet the $500,000 threshold prior to release to the public. In addition, prior to execution of any negotiated contractual document requiring subcontracting plan, the OSDBU shall be provided an opportunity to review the total procurement package, including the proposed subcontracting plan.

§ 29–1.713 Contracts with Small Business Administration.

§ 1.713–1I89Authority.

This section sets forth provisions for contracting with the Small Business Administrationunder Section 8(a) of the Small Business Act (15 U.S.C. 637(a)). The "Section 8(a)" contract program is a socio-economic, Congressionally-mandated and Presidentially-sponsored program aimed at opening the doors of Government contracting opportunities to small disadvantaged businesses unable or unlikely to compete successfully for a contract.

§ 29–1.713–2 Policy.

(a) It is the policy of DOL to give full consideration to contracting with SBA in order to foster and assist in the establishment and growth of Section 8(a) firms to the maximum extent practicable so that these firms may be self-sustaining, viable, competitive business entities within a reasonable period of time.

(b) To promote the policy in paragraph (a) of this section, DOL procurement activities are to enter into contracts with the Small Business Administration (SBA), and SBA may subcontract with Section 8(a) firms. The authority to negotiate these subcontracts may be delegated to DOL by SBA. In addition, DOL procurement activities shall take the necessary steps to:

(1) Invite appropriate SBA field representatives to identify needs for Section 8(a) contracts and to provide for cooperation and assistance on the part of DOL in verifying the availability or nonavailability of requirements, funding, and other pertinent factors; and

(2) Propose any requirement which appear to offer potential opportunity for contracting with SBA under authority of Section 8(a) of the Small Business Act, for consideration by approporiate SBA field representatives.

(c) The basis for entering into a Section 8(a) contract will be SBA's certification to DOL that SBA, through the Section 8(a) firm, is competent to perform a specific DOL requirement. The signing of the contract document may be accepted as SBA's certification.

(b) As is true of small businesses in general, Section 8(a) firms have varying degrees of experience in the business world, and some may not have knowledge of the complexity of Government procedures and of obligations the procedures impose on the contractor. Prior to initiating formal negotiations with a Section 8(a) firm, contracting personnel and small disadvantaged business specialists should make a special effort to ascertain whether the prospective contractor needs assistance in understanding Government procurement procedures. Whenever possible, assistance should be provided promptly, and the prospective contractor should be advised that additional management and technical assistance is available from the Small Business Administration.

§ 29–1.713–50 Procurement of technical requirements.

(a) *Source selection.* The Section 8(a) program is a business development program, and the policy expressed in FPR 1–3.101(d) does not apply. Additionally, SBA has ultimate responsibility for nomination of a Section 8(a) subcontractor for a proposed Section 8(a) requirement and may elect to deviate from the usual source nomination procedures.

(b) *Debriefing.* A debriefing, when requested in writing, shall be provided by the contracting officer to a Section 8(a) firm that has been unsuccessful in a Section 8(a) competition.

(c) *Liaison with the Small Business Administration.* Procuring activities will maintain a continuous liaison with the Office of Business Development, SBA, to ensure that the overall goals of each activity are achieved. In the event of a dispute between a procuring activity and an SBA representative regarding any aspects of Section 8(a) contracting, the procuring activity must promptly notify the OSDBU.

(1) Each Section 8(a) firm or group of firms nominated for a specific Section 8(a) requirement must be approved by SBA for that particular Section 8(a) requirement prior to any DOL discussions with the firm(s).

(2) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all Section 8(a) firms. It is incumbent upon DOL to assist SBA in this effort by utilizing the nomination process in a manner that would make use of the largest possible number of Section 8(a) firms.

(d) *Contract termination.* The OSDBU and SBA are to be notified prior to initiating final action to terminate a Section 8(a) contract. (See paragraph (c) of the "Special 8(a) Contract Conditions" prescribed as set forth in FPR 1–1.713–3(d)(1).I37* * * * * *

Subpart 29–1.8—Labor Surplus Area Concerns

§ 29–1.802 Labor surplus area policy.

§ 29–1.802–1 General policy.

It is the policy of the Department of Labor to award contracts with eligible labor-surplus area concerns. All procuring activities shall take positive action to award contracts to concerns that will perform substantially in labor-surplus areas. Each Small and Disadvantaged Business Specialist, assigned in accordance with DOLPR 29–1.704–2, of this part shall serve as liaison officer and shall have responsibility to administer the program within his/her area in accordance with policies and procedures defined in DOLPR 29–1.704–4.

* * * * *

Subpart 29–1.13—Minority Business Enterprise

§ 29–1.1300 Scope of subpart.

This subpart prescribes Department of Labor policies, procedures, and contract clauses which establish a minority business enterprise program pursuant to the provisions of FPR 1–1.13. This subpart is in addition to the policies and procedures for contracts with the Small Business Administration pursuant to Section 8(a) of the Small Business Act and other small disadvataged business concerns as prescribed under FPR 1–1.7 and DOLPR 29–1.7 of this part and as otherwise prescribed by law.

§ 29–1.1302 Agency programs.

§ 29–1.1302–50 DOL implementation.

(a) In accordance with provisions of Executive Order 11625, it is the policy of DOL to foster and assist in the establishment and growth of minority-owned and controlled business concerns to the maximum practicable extent, in order that such concerns may become self-sustaining, viable, and competitive enterprises.

(b) The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the general supervision of the Department's minority business enterprise program. This office is specifically responsible for:

(1) Managing the DOL Minority Business Enterprise Program;

(2) Providing staff guidance to activities of the Department;

(3) Establishing effective working relations with the minority business community nationwide;

(4) Representing DOL before other Government agencies on matters primarily affecting minority business affairs;

(5) Providing data and information relating to the minority business program to the Secretary and all sources internal and external to DOL; and

(6) Serving as the Department's monitoring and coordinating point for all matters concerning the Department's minority business enterprise program.

(c) The policies and procedures of DOLPR 29–1.704 are applicable to the minority business enterprise program.

Signed at Washington. D.C., on this 11th day of March 1982.

Alfred M. Zuck,

Assistant Secretary for Administration and Management.

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federal register

Tuesday
March 16, 1982

Part IV

Securities and Exchange Commission

Adoption of Integrated Disclosure System and Proposed Revision of Trading Practices Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 229, 230, 239, 240, 249, 250, 260, and 274

[Release Nos. 33-6383; 34-18524; 35-22407; 39-700; IC-12264; AS-306]

Adoption of Integrated Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of a comprehensive revision to the rules and forms governing the registration of securities under the Securities Act of 1933. This action integrates the disclosure systems under the various Federal securities laws and simplifies and improves the disclosure requirements imposed under these systems. Specifically, this action involves (1) the adoption of three registration forms which constitute the basic framework for registration statements under the Securities Act; (2) the expansion and reorganization of Regulation S-K as the repository for the uniform disclosure requirements of documents filed with the Commission under the Securities Act and the Securities Exchange Act of 1934; (3) the revision of the procedures which govern the registration of securities under the Securities Act and the registration and reports of certain issuers under the Exchange Act; (4) the adoption of a temporary rule governing the shelf registration of securities; (5) the adoption of a rule identifying certain circumstances bearing upon the reasonableness of the investigation to discharge one's obligation under section 11(b) of the Securities Act and upon what contsitutes reasonable grounds for belief under that section; (6) the adoption of rules permitting the voluntary disclosure of security ratings in registration statements under the Securities Act; (7) the revision of various rules, forms and schedules under the Securities Act and the Exchange Act to implement and to reflect other changes; and (8) the rescission of obsolete and rarely used forms under the Securities Act and the Exchange Act.

DATES: *Effective date:* Except with respect to Rule 415 (17 CFR 230.415), these amendments are effective May 24, 1982, for all documents filed on or after that date. Rule 415 (delayed or continuous offerings) is effective March 16, 1982 and will be effective until December 10, 1982.

Compliance date: Registrants are permitted, however, to use Rule 415 immediately and to use the other provisions amended herein in filings made after publication of this release in the **Federal Register**. If a registrant elects to comply with the provisions amended herein prior to May 24, 1982, it must comply with all the applicable provisions adopted herein (other than Rule 415) upon the election to do so and in any subsequent filings. Notwithstanding the above, registrants are permitted, in filings made after publication of this release in the **Federal Register**, to comply solely with the provisions of Instruction 5 to Item 103 of Regulation S-K amended herein when disclosing environmental proceedings and paragraph (d) of Item 503 of Regulation S-K with respect to the ratio of earnings to fixed charges.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, questions relating to these actions should be directed to the Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 as follows:

(1) Forms S-1, S-2, and S-3, Catherine Collins McCoy or Robert Pincus (202-272-2589);

(2) Regulation S-K, Robert Pincus (202-272-2589);

(3) Regulations C and 12B, W. Scott Cooper (202-272-2589);

(4) Shelf registration, Catherine Collins McCoy (202-272-2589) or William L. Larsen (202-272-2604);

(5) Liability issues, Gregory H. Mathews, (202-272-2589);

(6) Security ratings, Susan P. Davis, (202-272-2604);

(7) Securities Act implementing amendments, William L. Larsen (202-272-2604); and

(8) Exchange Act implementing amendments, Susan P. Davis (202-272-2604).

After the effective date, questions should be directed to the Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573) as follows:

(1) Forms S-1, S-2 and S-3, William E. Morley;

(2) Regulation S-K, Norman R. Schou;

(3) Regulation C and 12B, William E. Toomey;

(4) Shelf registration, David B. H. Martin;

(5) Liability issues, Michael R. Kargula;

(6) Security ratings, Ann M. Glickman;

(7) Securities Act implementing amendments, Michael R. Kargula; and

(8) Exchange Act implementing amendments, Ann M. Glickman. For questions concerning market related matters, particularly in connection with at the market offerings under Rule 415, contact Eric E. Miller, Division of Market Regulation (202-272-2882). For questions concerning the ratio of earnings to fixed charges, contact Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), or Clarence M. Staubs, Office of the Chief Accountant (202-272-2133). For questions concerning investment companies, contact Sandra Molley, Division of Investment Management (202-272-2033).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of various rules, registration forms and disclosure requirements under 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 Incentive Act of 1980, Pub. L. No. 96-477 (October 21, 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. III 1979)]. This action, in conjunction with the rescission of the Guides for the Preparation and Filing of Registration Statements (the "Guides"),[1] represents the final stage of the Commission's program to implement an integrated disclosure system under the Securities Act and the Exchange Act.[2] Specifically, the Commission has adopted: (1) Three new registration forms (Forms S-1, S-2 and S-3) (17 CFR 239.11, 239.12 and 239.13) which will serve as the basic framework for the registration of securities under the Securities Act; (2) amendments to

[1] *See* Release No. 33-6384 (March 3, 1982) which announces the rescission of the majority of the Guides and the reclassification of the remaining Guides as industry guides (the "1982 Industry Guides Release").

[2] The Commission, at this time, is not adopting the proposed revisions to Items 6, 9 and 22 of Schedule 14A under the proxy rules (17 CFR 240. 14a-100) and current Items 4 and 6 of Regulation S-K (17 CFR Part 229) which originally were published in Release No. 34-17517 (February 5, 1981) [46 FR 11954] and were reproposed without change in Release No. 33-6338 (August 6, 1981) [46 FR 42042] (the "Exchange Act Coordinating Release") and in Release No. 33-6332 (August 6, 1981) [46 FR 41925] (the "S-K Release"). These proposed amendments, relating to (1) business and other relationships between registrants and directors, (2) full board consideration of shareholder nominations, (3) the vote needed for election to office, (4) management indebtedness and remuneration, (5) beneficial ownership and (6) certain amendments affecting shareholder proposals, will be considered as a part of the Commission's general review of the rules governing proxy solicitations.

Regulation S–K (17 CFR Part 229) which expand and reorganize this regulation, thereby creating a repository for the disclosure requirements of registration statements and reports filed with the Commission under the Securities Act and the Exchange Act, and which adopt provisions relating to the ratio of earnings to fixed charges and an amendment (to Instruction 5 of Item 103) which substantially revises the Commission's environmental disclosure requirement by establishing additional thresholds for disclosure; and (3) amendments to Regulation C (17 CFR 230.400 through 230.494) and Regulation 12B (17 CFR 240.12b–1 through 240.12b–36) which update and coordinate the procedures for filing registration statements and reports with the Commission under the Securities Act and the Exchange Act, respectively.[3] In addition to the revision of various forms, rules and schedules under the Securities Act and the Exchange Act to implement the integrated disclosure system and the rescission of obsolete and rarely used forms, the Commission has taken action to provide guidance on liability issues arising in the integrated disclosure system, to address by temporary rule the registration and sale of securities on a delayed or continuous basis, and to permit the disclosure of security ratings. With respect to liability issues, the Commission has adopted Rule 176 (17 CFR 230.176) identifying certain circumstances bearing upon the reasonableness of the investigation conducted to discharge one's obligation under section 11(b) of the Securities Act and upon what constitutes reasonable grounds for belief under that Section.[4] With respect to the registration and sales of securities that are to be offered and sold on a delayed or continuous basis in the future ("shelf registration"), the Commission has adopted Rule 415 in Regulation C establishing conditions for such registration on a temporary basis. With respect to security ratings, the Commission has set forth a statement of policy in Regulation S–K to permit the voluntary disclosure of security ratings in registration statements under the Securities Act and has adopted amendments to Rule 134 (17 CFR 230.134) and Rule 436 of Regulation C to facilitate such disclosure.

The Commission determined to announce the adoption of these actions in one release in order that registrants, their counsel and other interested persons would have a single document to which they could refer for an understanding of the integrated disclosure system. Attention is directed to the text of the forms and rules, which is presented in the order in which it will appear in the Code of Federal Regulations, for a more complete understanding.

The discussion of the newly adopted registration forms, rules and disclosure requirements has been organized in the same manner as a registrant and its counsel would approach the integrated disclosure system for guidance as to the applicable requirements for the registration of securities under the Securities Act or the preparation of registration statements or periodic reports under the Exchange Act.[5] First, the registrant would look to the registration or report forms to determine the proper form to be used. Second, after choosing the proper form, the registrant would be directed by the form to Regulation S–K for the specific disclosure requirements for each form. Third, after identifying the disclosure requirements, the registrant would look to Regulation C or Regulation 12B for the procedures to be followed in preparing and filing the particular registration statement or report. Moreover, the registrant, its counsel and other persons involved in the registration process should be aware of the statutory obligations and duties under the Securities Act. The following Table of Contents indicates the order and specific components of the discussion set forth herein.

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[3] The Commission is withdrawing certain rules and forms that were proposed at various stages in connection with the Commission's integration program, but are not being adopted. *See* Release No. 33–6385 (March 3, 1982).

[4] The Commission also has adopted Rule 412 (17 CFR 230.412, proposed as Rule 418) under Regulation C to resolve questions of liability in the context of modified or superseded statements which are found in documents incorporated by reference into other documents.

[5] In light of this organization, certain issues which were highlighted by the use of separate releases at the proposal stage will be discussed in the context of the part of the integrated disclosure system in which they are located. For example, *see* the discussion of shelf registration in Part IV, "Procedural Provisions," and the discussion of security ratings in Part III, "Substantive Disclosure Provisions."

C. Safe Harbor Rules for Projections

I. Background

The concept of integrating the various disclosure systems under the Federal securities laws has been the subject of theoretical discussion for quite some time.[6] It was long clear that the transaction-oriented framework of the Securities Act and the disclosure system which developed thereunder often overlap with, and produce disclosure duplicative of, that prepared independently in response to the status-oriented framework of the Exchange Act and the continuous disclosure system operating thereunder. The Commission's program [7] to integrate the two disclosure systems has focused on two principal objectives: first, a comprehensive evaluation of the disclosure policies and procedures under both Acts to identify the information which is material to security holders and investors in both the distribution process and the trading markets, such as the minimum information package;[8] and, second, a determination of the circumstances under which information should be disseminated to security holders, investors and the marketplace.[9] The goal of the Commission's integrated disclosure program has been to revise or eliminate overlapping or unnecessary disclosure and dissemination requirements wherever possible, thereby reducing burdens on registrants while at the same time ensuring that security holders, investors and the marketplace have been provided with meaningful, nonduplicative information upon which to base investment decisions.

This rulemaking action is the culmination of several rulemaking proceedings initiated by the Commission over the past several years.[10] Specifically, this action is based on eight major proposals published for comment in August 1981.[11] Based upon the comment received [12] and its own experience, the Commission has determined to adopt the proposals substantially as published for comment.

II. Forms

The registration and report forms under the Securities Act and the Exchange Act provide the starting point for registrants complying with the integrated disclosure system. Each of the various Securities Act registration forms establishes the type and amount of disclosure required by registrants able to use the form. The Exchange Act forms establish the type and amount of disclosure required to be provided in the Exchange Act reports which registrants must file.

A. Securities Act Registration Forms

1. *Forms S–1, S–2 and S–3.*

a. *Operation of the three-tier registration system.*—New Forms S–1, S–2 [13] and S–3 provide the basic framework for the registration of securities under the Securities Act. These Forms establish three categories for registration statements. The same information will be required to be part of Securities Act registration statements in all categories, either presented in, or delivered with, the prospectus or incorporated by reference from another document. Differences among the three Forms reflect the Commission's determination as to (1) when this required information must be presented in full in the prospectus delivered to investors, (2) when certain of the delivered information may be presented on a streamlined basis and supplemented by documents incorporated by reference, and (3) when certain information may be incorporated by reference from documents in the Exchange Act continuous reporting system without delivery to investors.

Generally, it is the registrant-oriented portion of the information relating to a public offering, as opposed to the transaction-specific information, which sometimes may be satisfied otherwise than through full prospectus presentation. Much of this registrant-oriented information is the same as that which is required to be presented in annual reports to the Commission on Form 10–K and in annual reports to security holders, as well as in quarterly and current reports on Forms 10–Q (17 CFR 249.308a) and 8–K (17 CFR 249.308), respectively. Information about the offering, however, will not have been reported on in any other disclosure document or other wise have been publicly disseminated and thus will be required to be presented in the prospectus in all cases.

The registration statement for the first category is Form S–1. It requires complete disclosure to be set forth in the prospectus and permits no incorporation by reference. Form S–1 is to be used by registrants in the Exchange Act reporting system for less than three years and also may be used by any registrants who choose to do so or for whom no other form is available.

The second category of registration statement is Form S–2, which combines reliance on incorporating Exchange Act reports by reference with delivery to investors of streamlined information. Registrants in the Exchange Act reporting system for three years may use this Form, which allows them to choose to either: (1) Deliver a copy of their annual report to security holders along with the prospectus describing the offering or (2) present registrant-oriented information comparable to that of the annual report in the prospectus along with the description of the offering. In either case, the more complete information in the Form 10–K is incorporated by reference into the prospectus.

Form S–3, in reliance on the efficient market theory, allows maximum use of incorporation by reference of Exchange Act reports and requires the least disclosure to be presented in the prospectus and delivered to investors. Generally, the Form S–3 prospectus will

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[6] *See e.g.*, Cohen, "Truth in Securities Revisited," 79 Harv. L. Rev. 1340 (1966).

[7] For a comprehensive discussion of the integration program, including its legislative and administrative background, *see* Release No. 33–6235 (September 2, 1980) [45 FR 63693] (the "ABC Release").

[8] *See* the ABC Release; Release No. 33–6231 (September 2, 1980) [45 FR 63630] adopting major revisions to Form 10–K [17 CFR 249.310) and the annual report to security holders pursuant to Rule 14a–3 (CFR 240.14a–3); and Release No. 33–6331 (August 6, 1981) [46 FR 41902] proposing three new forms which would represent a comprehensive revision of the system for registration under the Securities Act (the "S–1–2–3 Release") for expanded discusssions of the development of the minimum information package.

[9] The dissemination requirements have been developed, in part, on the premise that information regularly furnished to the marketplace through formal Exchange Act periodic reports and informal corporate communications may be reflected in the price of the outstanding securities and thus need not always be reiterated in a prospectus in the context of a distribution. For a comprehensive discussion of this premise, *see* the S–1–2–3 Release and the ABC Release.

[10] *See* the S–1–2–3 Release, 46 FR at 41903, for a summary of the actions taken in the 10–K Release, the proposals in Release No. 33–6276 (December 23, 1980) [46 FR 78] (the "Guides Release") and the other rulemaking projects designed to implement the integrated disclosure system.

[11] *See* the S–1–2–3 Release; the S–K Release; Release No. 33–6333 (August 6, 1981) [46 FR 41971] (the "Regulation C Release"); Release No. 33–6334 (August 6, 1981) [46 FR 42001] (the "Shelf Release"); Release No. 33–6335 (August 6, 1981) [46 FR 42015] (the "Liability Release"); Release No. 33–6336 (August 6, 1981) [46 FR 42024] (the "Security Ratings Release"); Release No. 33–6337 (August 6, 1981) [46 FR 42029] (the "Securities Act Coordinating Release"); and the Exchange Act Coordinating Release.

[12] Pursuant to the Commission's request for comment on the eight releases set forth above, 146 commentators submitted 203 letters addressing one or more of those releases. The letters are available for public inspection and copying at the Commission's Public Reference Room. (*See* File Nos. S7–893 through S7–900). The Commission has placed in the files a copy of highlights of the public comments prepared by the Division of Corporation Finance.

[13] New Form S–1 represents a substantial revision of existing Form S–1. Existing Form S–2 (for shares of certain corporations in the development stage) will no longer exist; it is being replaced by new Form S–2, which bears no relationship to existing Form S–2.

present the same transaction-specific information as will be presented in a Form S–1 or S–2 prospectus. Information concerning the registrant will be incorporated by reference from Exchange Act reports. The prospectus will not be required to present any information concerning the registrant unless there has been a material change in the registrant's affairs which has not been reported in an Exchange Act filing or the Exchange Act reports incorporated by reference do not reflect certain restated financial statements or other financial information.

Most public commentators supported the proposed three-tier Securities Act registration framework in general and agreed that criteria determining prospectus disclosure and delivery requirements based on reporting history and following in the marketplace are more appropriate than criteria related to the quality of the registrant. Accordingly, the Commission has determined to adopt Forms S–1, S–2 and S–3 substantially as proposed.

b. *Revisions in Forms as Adopted.*—(1) *Form S–1.* Form S–1 is adopted essentially unchanged from proposed Form S–1. Complete information about both the transaction and the registrant is required to be presented in the prospectus. Reference is made to Regulation S–K and, with respect to financial statements, to Regulation S–X (17 CFR Part 210) for specific content provisions. Commentators generally applauded the proposed Form S–1's simplification, the use of references to the uniform disclosure provisions of Regulation S–K, and the elimination of unnecessary or outmoded disclosure provisions that previously had been required.

The few minor changes from the proposal are as follows. First, General Instruction III relating to the omission of or the filing of substituted financial statements in certain cases has been deleted because it unnecessarily repeats the provisions of Rule 3–13 of Regulation S–X.[14] Second, an instruction has been added to the Instructions as to Summary Prospectuses to clarify the requirements relating to such prospectuses where securities being registered are to be offered pursuant to an exchange offer. Third, revisions were made to correspond to changes made in items of Regulation S–K (specifically, the change of proposed Item 510, Indemnification of Directors and Officers, into Item 510, Disclosure of Commission Position on Indemnification for Securities Act Liabilities, and Item 702, Indemnification of Directors and Officers, with the new Item 510 placed in Part I of the registration statement).[15] Finally, several changes were made in the numbering and terminology of certain provisions of Forms S–1 for purposes of clarification and consistency.

(2) *Form S–2.* Form S–2 as adopted reflects no major changes from the Form as proposed. The proposal received general support and few specific comments or objections. While a few commentators were concerned about the Form's optional use of the annual report to security holders and believed it should be expanded to include the optional use of Form 10–K, the Commission has made no change in the formulation of the multiple document delivery aspect of Form S–2. The Commission continues to believe that, by providing an opportunity to make use of the highly readable annual report to security holders, an existing disclosure document, the Form not only affords an opportunity to affect savings in the cost of registration but also promotes the goal of concise, effective communication in the Securities Act context.

A few commentators suggested changing the Form S–2 formulation regarding Exchange Act documents incorporated by reference to allow subsequently filed reports to be incorporated into Form S–2 as is permitted on Form S–3. The Commission has determined not to make this change because it does not believe that companies using Form S–2 are sufficiently widely followed to insure sufficient dissemination of information in Exchange Act reports in the context of an offering of securities under the Securities Act.

A number of changes, of a generally clarifying nature, have been made in response to commentators' suggestions. In the order in which these changes appear in the Form, they are as follows:

First, General Instruction I.G. has been expanded to clarify that Form S–2 may be used by subsidiaries who do not themselves meet the tests for use of the Form but whose parants meet the Form S–2 eligibility requirements and guarantee the securities offered.

Second, Item 11 (Information with Respect to the Registrant) has been changed in several respects.[16] An instruction has been added to Item 11 to codify the discussion in the S–1–2–3 Release which indicated that where the multiple document delivery option is chosen, each document must be delivered with the preliminary prospectus but need not be redelivered with the final prospectus if the recipient already has been given the document along with the preliminary prospectus. Item 11 also is changed to correct an oversight in proposed Form S–2 by adding to Item 11(b)(2), which sets forth the prospectus disclosure requirements if the annual report option is not chosen, a requirement for interim financial information and a requirement relating to restated financial statements. The provision requiring restated financial statements where there have been business combinations accounted for by the pooling of interest method subsequent to the most recent fiscal year end has been limited so that the item as adopted requires the restated financial statements only when the acquired businesses meet the test of a significant subsidiary.[17]

Several commentators mentioned the possible conflict between Item 11 of proposed Forms S–2 and S–3, which requires restated financial statements when poolings have occurred subsequent to year end, and Paragraph 61 of APB Opinion No. 16, which does not permit the issuance of restated financial statements of combined entities until after the financial statements of the combining entity have been issued. In such circumstances, the staff has permitted inclusion in the filing of the separate financial statements of the combining entities and supplemental pro forma information of the combined entity. This matter will be considered for inclusion in the Commission's final pro forma rules.

Third, Item 12 (Incorporation of Certain Information by Reference) is changed (1) to clarify in paragraph one that only specific portions of the annual and quarterly reports to security holders

[14] For the same reason, General Instruction C, Filing of Other Financial Statements in Certain Cases, has been deleted from Form S–2.

[15] Similar changes were made in Forma S–2, S–3 and the other Securities Act Forms amended herein to coordinate with this change in Regulation S–K.

[16] Commentators also pointed out that the requirement in Item 11 of proposed Forms S–2 and S–3 to furnish restated financial statements when poolings have occurred subsequent to year end was duplicative of Rule 3–08 of Regulation S–X. In the recent release proposing revisions to the pro forma financial information rules, the current Rule 3–08 requirements for such restated information are proposed to be included in a revised Article 11 of Regulation S–X. *See* Release No. 33–6350 (September 24, 1981) [46 FR 48943]. Accordingly, no changes have been made to this provision in the final Form S–2 and S–3 requirements. The financial information requirements of Forms S–2 and S–3 relating to restated financial statements, Rule 3–07 and 3–08 transactions and material dispositions of assets outside the normal course of business will be reviewed and any necessary changes made when final action is taken on the pro forma proposals.

[17] The term "significant subsidiary" is defined identically in Rule 1–02 of Regulation S–X (adopted in Release No. 33–6359,) November 6, 1981) [46 FR 56171]) and in Rule 405 of Regulation C as adopted herein.

must be incorporated by reference, if applicable, and (2) to add an instruction directing registrants' attention to Rule 439 of Regulation C regarding consents to use of material incorporated by reference. [18]

Finally, the signature provision of Form S–2 has been changed to add a reasonable belief standard to the requirement that the registrant certify that it meets the requirements for filing on Form S–2. [19] The proposed signature provision would have required those signing the registration statement on behalf of the registrant to certify that the registrant meets the requirements for filing on Form S–2. The Commission believes that requiring the registrant to certify that it has reasonable grounds to believe that it meets the tests for use of the Form will insure that sufficient attention is devoted to those tests without at the same time imposing an unnecessary burden or giving rise to the liability concerns to which several commentors expressed objection.

(2) *Form S–3.* The greatest commentator response was directed to Form S–3, particularly to the criteria for use of the Form. Commentators generally agreed that Form S–3's dual eligibility requirements, *i.e.*, registrant requirements and transaction requirements, adequately meet the objective of relating short-form registration to the existence of widespread following in the marketplace. Moreover, commentators directed substantial attention to the specific transaction requirements for primary offerings and generally believed that (a) a test based on the registrant's float, *i.e.*, the aggregate market value of outstanding voting stock held by non-affiliates, is an appropriate measure of marketplace following and (b) a float of $150 million is the appropriate level at which short-form registration should be allowed. In addition, a number of commentators supported the alternative transaction requirement on which the Commission specifically requested comment, which would allow use of the Form by registrants with a smaller float who have a minimum volume of shares traded on an annual basis. Accordingly, the Commission has determined to adopt the $150 million float transaction requirement for the use of Form S–3 by certain registrants and to add an alternative test of $100 million float and 3 million share annual trading volume.

The use of Form S–3 to register primary offerings of certain high grade non-convertible debt securities received overwhelming commentator support. Commentators agreed that short-form prospectuses are appropriate for issues of investment grade debt regardless of the registrant's float, because such securities are generally purchased on the basis of interest rates and security ratings. In addition, commentators supported expansion of the test to include high grade non-convertible preferred stock regardless of the registrant's float. The Commission is adopting this transaction requirement, with an expansion to include preferred stock offerings, and is retaining the use of security ratings to define what constitutes an investment grade security. The definition of investment grade for purposes of the use of Form S–3 also is clarified to indicate that a rating in one of the generic rating categories which signify investment grade is required and that typically it is the four highest rating categories (within which there may be gradations, such as pluses or minuses, to indicate relative standing) which signify investment grade.

With respect to transactions involving secondary offerings (*i.e.*, offerings of outstanding securities to be offered for the account of any person other than the registrant), Form S–3 was proposed to be available for offerings of securities of registrants who meet the registrant requirements and the $150 million float transaction requirement. [20] Most of the commentators who responded to the Commission's specific inquiry as to this change from the provisions of Form S–16 (17 CFR 239.27), which did not impose any float test upon secondary offerings, [21] objected to this aspect of the proposal. These commentators asserted that the Form S–3 test would impact adversely venture capital companies and their investors and such other shareholders as directors and other affiliates of companies acquired in transactions subject to Rule 145 (17 CFR 230.145). They cited the similarities between these shareholders and other holders who purchase their shares in secondary market transactions and the absence of any evidence of abuse related to the more expanded availability of Form S–16 for secondary offerings. [22]

As a result of the comments received, the Commission further analyzed the secondary offering transactions registered on Form S–16 and concluded that most secondary offerings are more in the nature of ordinary market transactions than primary offerings by the registrant, and, thus, that Exchange Act reports may be relied upon to provide the marketplace the information needed respecting the registrant. Accordingly, if the registrant meets the Exchange Act reporting and other registrant requirements, Form S–3 will be available for registering secondary offerings of securities listed on an exchange or quoted on the automatic quotation system of a national securities association. [23]

In addition to the changes discussed above, Form S–3 has been revised in several further respects, largely in response to public comments. First, the provisions relating to the use of Form S–3 by subsidiaries have been placed in a new General Instruction C which is intended to clarify that the Form may be used if: (a) The subsidiary itself meets the various eligibility requirements; (b) the parent meets the eligibility requirements and guarantees the securities offered; or (c) the parent meets the registrant requirements (Exchange Act reporting history, *etc.*) and the securities offered are investment grade debt or preferred stock. The Commission believes that this revision responds to those commentators whose concerns suggested a lack of clarity in the provision as proposed. In addition, the expansion of the investment grade securities test to include preferred stock responds to the concerns of those commentators who advocated relaxing the requirement for parent guarantees or otherwise expanding the use of Form S–3 by subsidiaries. The Commission does not believe any further expansion for subsidiaries is necessary or appropriate for short form registration.

Second, a new General Instruction D has been added to allow foreign private issuers who meet certain registrant criteria to use Form S–3 to register securities to be offered upon the exercise of certain outstanding rights.

[18] A reference to Rule 439 also is added to Item 12 of Form S–3.

[19] The signature provision of Form S–3 and the other Securities Act forms amended herein are similarly changed.

[20] For secondary offerings of securities acquired pursuant to an offering registered on Form S–8 (17 CFR 239.16b), only the registrant requirements or certain volume limitations specified in Form S–8 must be met.

[21] Form S–16, which is replaced by Form S–3, is being rescinded as part of the rulemaking actions affected in this release.

[22] Form S–16 has permitted use of short form registration statements for secondary offerings since its adoption in 1970. *See* Release No. 33–5117 (December 23, 1970) [36 FR 777].

[23] Because this determination reflects only a difference as to actual delivery (the Exchange Act reports would be incorporated by reference into the registration statement), the selling security holder retains statutory responsibility for the accuracy of the entire registration statement.

Such rights offerings previously have been allowed to be registered on Form S–16. The new instruction is intended to maintain the status quo for rights offerings by foreign private issuers until such time as the Commission takes final action with respect to the outstanding proposals for an integrated disclosure system for foreign private issuers.[24]

Third, Item 9 (Description of Securities to be Registered) and Item 12 (Incorporation of Certain Information by Reference) have been revised to allow the description of securities to be incorporated by reference from Exchange Act reports, rather than presented in the prospectus, where capital stock is being registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act.

Fourth, Item 11 (Material Changes) has been revised in several respects in light of substantial comment. Paragraph (b) has been revised to provide that the restated financial statements and other financial information specified therein may be incorporated by reference in lieu of prospectus presentation not only from those Exchange Act reports which Item 12(a) requires to be incorporated by reference (Form 10–K and all other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act), but also from other documents filed with the Commission (proxy statements pursuant to section 14(a) of the Exchange Act or Rule 424(c) prospectuses under the Securities Act) which may contain the specified information. The provisions specifying the necessary additional financial information have been clarified and a materiality standard relating to the test for a significant subsidiary has been added to the requirement for restated financial statements for acquisitions accounted for by the pooling of interests method. While some commentators believed the additional financial information required by Item 11(b) is inappropriate in a short form prospectus, it should be noted that such financial statements and information would need to be presented in the prospectus only if not disclosed in reports on Forms 10–K, 8 (17 CFR Part 249. 460), 8–K or 10–Q, in proxy statements or in previous Securities Act prospectuses which are incorporated by reference into the registration statement.[25]

The final change to Item 11 is the deletion of proposed paragraph (b)(2), which would have required a brief prospectus description of the transaction, accounting change, correction or disposition with respect to which financial information is incorporated by reference. The Commission agrees with the commentators, who opposed this mandatory description provision, that prospectus descriptions of the information incorporated by reference should be addressed more flexibly, relying on registrant discretion and on the facts of individual cases.

The Commission has determined to adopt Form S–3 as proposed with respect to a number of matters on which public comment was received. First, commentators widely applauded the proposal to provide that registration statements relating solely to dividend or interest reinvestment plans become effective automatically on the twentieth day after filing.

Commentators also supported the decision reflected in the S–1–2–3 Release to maximize the flexibility provided in Form S–3 by not mandating a specific minimum time period between filing and effectiveness of a registration statement on Form S–3. The Commission believes that it can deal effectively with this issue through its administrative discretion to grant requests for acceleration, and, therefore, that it is not necessary to impair Form S–3's flexibility by imposing a specified minimum time period requirement before Form S–3 registration statements may become effective.

While a number of commentators advocated making Forms S–3 and S–2 available for registering securities isssued in an exchange offer for securities of another person, the Commission has determined not to make these Forms available for exchange offer registration at this time. For the reasons more fully described in the S–1–2–3 Release, the Commission believes it is more appropriate to address the appropriate form and content for exchange offer registration statements as part of the separate business combination project which the staff will be considering this year.

2. *Rescission of Forms S–7 and S–16 and Replacement of Existing Form S–2.* As a consequence of the adoption of new Forms S–2 and S–3, the Commission is rescinding Forms S–7 (17 CFR 239.26) and S–16 (17 CFR 239.27) and replacing existing Form S–2.

3. *Rescission of Obsolete Forms.* In an effort to streamline further the Securities Act registration system, the Commission proposed to rescind the following infrequently used or obsolete forms: Form C–2 (17 CFR 239.4) (for Certain Types of Certificates of Interest in Securities); Form D–1 (17 CFR 239.6) (for Certificates of Deposit); Form D–1A (17 CFR 239.7) (for Certificates of Deposit Issued by Issuers of Securities Called for Deposit); Form S–10 (17 CFR 239.17) (for Oil or Gas Interests or Rights); and Form S–13 (17 CFR 239.25) (for Registration under the Securities Act of 1933 of Voting Trust Certificates).[26] Commentators generally supported rescission of these Forms, but urged that the Commission state what forms registrants should employ instead of those rescinded. The Commission is rescinding the Forms as proposed and believes that any questions with respect to the appropriate form to be used can be answered by the staff on a case by case basis.

4. *Amendments to Other Securities Act Forms.* In addition to adopting the basic Securities Act registration framework consisting of Forms S–1, S–2 and S–3, the Commission reviewed the other major Securities Act registration forms and proposed a number of changes in certain forms.[27] These proposed changes were intended to be consistent with the new registration framework and to clarify, streamline and integrate disclosure requirements by (1) substituting, where possible, the uniform disclosure items of Regulation S–K for existing disclosure items; (2) eliminating unnecessary and burdensome disclosure items; and (3) standardizing certain other aspects of the forms, such as instructions and signature clauses. Public comment on the proposed changes was predominantly favorable. Therefore, the Commission is adopting most of the coordinating and technical amendments to the Securities Act forms as proposed. However, in certain instances discussed below, the Commission has made some changes in response to public comments or where otherwise deemed appropriate.

[24] Release No. 33–6360 (November 20, 1981) [46 FR 58511].

[25] A number of commentators expressed concern that outdated financial statements from the latest Form 10–K would be incorporated by reference when restated financial statements are included in the prospectus or are incorporated by reference because of an accounting change or pooling subsequent to the most recent fiscal year end. Additionally, concern was expressed that the staff may require an accountant's consent for such outdated financial statements. Rule 412 of Regulation C would operate to make the restated financial statements supersede the Form 10–K financial statements and would render the superseded items not a part of the registration statement or prospectus for purposes of the Securities Act. Therefore, no consent would be required for the superseded financial statements.

[26] Securities Act Coordinating Release.

[27] Securities Act Forms proposed to be amended in the Securities Act Coordinating Release included Forms S–8, S–11 (17 CFR 239.18), S–14 (17 CFR 239.23) and S–15 (17 CFR 239.29).

There are two minor changes that affect all of the Forms proposed to be amended. The signature requirement for all of the Forms has been changed in the same respect as has that of Forms S–2 and S–3 so that registrants need only certify that they have reasonable grounds to believe that they meet all of the requirements for filing a particular form. In addition, a change in the format of amended Regulation S–K will be reflected in all of the Forms so that they now will include, in the prospectus, an item calling for disclosure of the Commission position on indemnification for Securities Act liabilities [28] and, in Part II of the registration statement, an item requiring certain information regarding the indemnification of directors and officers. This change necessitated renumbering of certain items in all of the Forms. Finally, where necessary, coordinating changes have been made in all of the Forms to reflect changes in numeration or other technical changes that have been made in Regulation C and other parts of the integrated disclosure system.

Other respects in which the amendments to the Forms differ from the proposals are as follows:

a. *Form S–8.*—The number of additional copies required by Rules 402 and 472 of Regulation C as specified in Instruction D has been raised from two to three to meet the Commission's data processing requirements. In addition, several commentators requested that Form S–8 be made available for resales by affiliates. The Commission continues to believe that it would be inappropriate to allow the use of Form S–8 for resales by affiliates.[29] Moreover, Form S–3 is available for resales of securities acquired pursuant to Form S–8 by affiliates of the issuer pursuant to registration under Rule 415, provided that the registrant satisfies the Registrant Requirements for use of Form S–3, which are the same as the eligibility requirements for the use of Form S–2.

b. *Form S–11.*—With the exception of the general changes discussed above, the revisions to Form S–11 are adopted substantially as proposed.

c. *Form S–14.*—General Instruction D regarding the cross-reference sheet has been relocated as an Instruction to Item 1 of the Form. The Commission has eliminated proposed Item 5 regarding dilution because it does not wish to alter existing practice with respect to disclosure in merger transactions pending consideration of the separate business combination project. Form items are renumbered accordingly. Paragraph (a) of Item 6 (Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters) is replaced by a reference to Item 507 of Regulation S–K (Selling Security Holders), which calls for substantially the same information.

d. *Form S–15.*—Similar to the treatment given parallel Item 6(a) of Form S–14, paragraph (a) of Item 10, which calls for information on selling security holders, is replaced by a reference to Item 507 of Regulation S–K (Selling Security Holders).

B. *Exchange Act Reporting and Registration Forms.* In the Exchange Act Coordinating Release, the Commission proposed to revise the remaining [30] major component in the periodic reporting system, Form 8–K, for current reporting pursuant to Section 13 or 15(d) of the Exchange Act, and to revise Forms 10, 8–A and 8–B (17 CFR 249.210, 249.208a and 249.208b), for the registration of securities pursuant to Section 12(b) or (g) of the Exchange Act, in order to clarify, streamline and otherwise improve their disclosure requirements. In the same release, the Commission proposed several clarifying amendments to Form 10–K, as well as two amendments to elicit certain fourth quarter information in order to produce a continuous flow of corporate information. In addition, the Commission proposed to amend the instructions to Forms 10–K and 10–Q to clarify the conditions pursuant to which informal annual or quarterly reports to shareholders may be combined with the required Form 10–K or 10–Q information. Finally, several Exchange Act reports and registration forms, Forms 12 (17 CFR 249. 212), 14 (17 CFR 249.214), 16 (17 CFR 249.216), 14–K (17 CFR 249.314), 16–K (17 CFR 249.316) and 4–MD (17 CFR 249.404), were proposed to be rescinded. Through these proposals, which are explained in more detail in the Exchange Act Coordinating Release, the Commission intended substantially to complete its program to ensure the proper functioning of Exchange Act reports and registration statements in the integrated disclosure system.

The comments of the few commentators who specifically commented on the proposed revisions to Exchange Act reports and registration statements were generally favorable. Accordingly, the Commission is adopting the proposed amendments, with several minor changes discussed below made in response to commentators' suggestions or where otherwise deemed appropriate.

1. *Rescission of Obsolete Forms.* The Commission is rescinding, as proposed, three registration forms, Form 12 (for Issuers Filing Reports With Other Federal Agencies), Form 14 (for Certificates of deposit Issued by a Committee) and Form 16 (for Voting Trust Certificates), and three annual report forms, Forms 14–K and 4–MD (Annual Reports for Certificates of Deposit Issued by a Committee) and Form 16–K (Annual Report for Voting Trust Certificates). The proposal met with no opposition, although one commentator requested that the Commission clarify what form a registrant should use instead of any of the rescinded Forms. As in the case of the rescinded Securities Act Forms, any questions with respect to the appropriate form to be used can be answered by the staff on a case by case basis.

2. *Forms 10, 8–A and 8–B.* The Commission is adopting amendments to revise Exchange Act registration Forms 10, 8–A and 8–B as proposed with one minor renumbering change. [31]

3. *Form 8–K.* Form 8–K plays a critical role in the periodic reporting system, which is intended to provide investors with a continuous stream of corporate information. Reports on Form 8–K are used to provide material information concerning certain specified events that may have occurred since the latest annual report on Form 10–K or quarterly report on Form 10–Q was filed. In addition, registrants may, and in fact are encouraged to, file voluntary reports on Form 8–K pursuant to Item 5 describing any other events that may be of interest to investors.

Commentators were very supportive of most of the proposed amendments to Form 8–K, which included, among other things, new instructions relating to incorporation by reference of press releases and filing of required financial statements for an acquired business up to 60 days after the Form 8–K is filed.[32]

[28] This item would require prospectus disclosure only in the unusual cases where, because no request for acceleration of effective date is made, the undertaking required by Item 512(i) is not required to be included in the registration statement.

[29] *See* Release No. 33–5767 (November 22, 1976) [41 FR 52662] where the Commission amended Form S–8 to prohibit the use of the Form for reoffers or resales because Form S–8 prospectuses do not provide adequate notice of or information with respect to the registered reoffer.

[30] Forms 10–K and 10–Q were revised in earlier phases of the integration program. *See* the 10–K Release and Release No. 33–6288 (February 9, 1981) [46 FR 12480].

[31] Due to the renumbering of Regulation S–K Item 510(a) as Item 702, Item 11 of Form 10 (Indemnification of Directors and Officers), which as proposed referred to Item 510(a), is changed to refer to Item 702.

[32] The Commission recently solicited comment (Release No. 33–6350) on whether Form 8–K should

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The only proposal that received substantial comment was that replacing the requirement to file a report pursuant to Item 5 of Form 8–K (Other Materially Important Events) within 10 days after the event with a statement encouraging registrants to file "promptly" after the event. While several commentators applauded the increased flexibility that would be afforded to registrants under the new provision, other commentators were concerned that the change would create an unnecessary ambiguity as to the time for filing voluntary reports on Form 8–K. Since reports pursuant to Item 5 are voluntary, the Commission believes it is inconsistent to establish a specific time by which such reports must be filed. Accordingly, the Commission is adopting the Item 5 timing requirement as proposed.

The Commission also is making an additional change in Item 5 suggested by a commentator. Item 5 is being amended to make clear that registrants may file voluntary reports not only to report material events, but also to inform their security holders of other matters that may be of interest. The amendment is intended to encourage further voluntary reports on Form 8–K and to remove any reluctance that registrants may have to file voluntary reports pursuant to Item 5 on the basis that they will be deemed to have admitted the materiality of the event reported.[33]

4. *Form 10–K.* The Commission is adopting several amendments to Form 10–K to eliminate ambiguities and close disclosure gaps that came to light after the Commission's revision of that Form in December 1980. First, the Commission is requiring that a registrant include information relating to the fourth quarter of its fiscal year concerning terminated legal proceedings and matters submitted to a vote of security holders. In connection with these amendments, the Commission also is amending Instruction J of Form 10–K, as suggested by one commentator, to permit certain wholly-owned subsidiaries to omit fourth quarter information relating to matters submitted to a vote of security holders. These changes are intended to make the disclosure requirements relating to a registrant's fourth quarter consistent with those in Form 10–Q relating to the registrant's other fiscal quarters.[34]

Second, the Commission is adopting the proposed note to the cover page intended to clarify the staff's position with respect to calculating the aggregate market value of voting stock held by non-affiliates, but it is revising the proposal, as suggested by a commentator, to incorporate the "unreasonable effort and expense" standard of Exchange Act Rule 12b–21. Finally, the Commission is eliminating the last sentence of General Instruction C(1) as unnecessary in view of the Instruction's reference to Rule 12b–13.

III. Disclosure Provisions

A. *Operation and Philosophy of Regulation S–K.* Since its initial adoption,[35] Regulation S–K has evolved beyond a source of certain standardized registrant-related disclosure provisions to become a more complete compendium of disclosure requirements applicable to Securities Act and Exchange Act filings.[36] This evolution was noted in the S–K Release and endorsed by the commentators. The adopted revisions represent a major step in the consolidation of disclosure requirements into Regulation S–K. The Commission intends to continue this consolidation of disclosure requirements in Regulation S–K.[37]

In general, Regulation S–K is not self-executing: inclusion of the information specified in the Regulation is required only to the extent a form or schedule governing a document specifically directs inclusion of the information prescribed by an Item of Regulation S–K. There are two exceptions to this general rule in the Regulation as adopted today. The Commission policies outlined in the General section of the Regulation with respect to projections and security ratings are applicable to all disclosure documents, without direct reference in the schedule or form to the specific provision of the Regulation setting forth such policies and whether or not the schedule or form incorporates any Item of Regulation S–K. Likewise, the Industry Guides listed in the last section of the Regulation are applicable to the disclosure documents indicated in the list, whether or not the applicable form or schedule refers to Regulation S–K or to the Industry Guide.[38]

B. *Synopsis of Revisions.* The proposed reorganization of Regulation S–K into nine major sections met with the general approval of the commentators. However, to simplify CFR references, the numbering of the Items has been revised to permit direct citation to specific Items of the Regulation, rather than to the nine sections of the Regulation. The only changes to the proposed reorganization are an incorporation of the requirements regarding disclosure of the ratios of earnings to fixed changes in the Registration Statement and Prospectus Provisions section of the Regulation and the relocation of paragraph (a) of proposed Item 510 specifying the required description of indemnification provisions into the Miscellaneous section of the Regulation. The move of the ratio disclosure requirements from the Financial Information section reflects the fact that such information is required only in Securities Act filings and the move of the indemnification provisions is based on the fact that such disclosure is required in Form 10 registration statements under the Exchange Act, as well as in Securities Act filings.

There follows a brief discussion of the more substantive changes made to the Items as proposed in the S–K Release.

1. *General.* The only change to the General section of the Regulation is the inclusion in paragraph (c) of the Commission's Policy on Security Ratings.

2. *Item 101—Description of Business.* Since, as noted in the S–K Release, Items 101, 102, 103, 401, 402 and 403 of Regulation S–K will be the subject of future "sunset" review, no major reconsideration of these Items was undertaken.[39] Commentators'

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be revised to require pro forma financial information for consummated transactions, as was suggested by one commentator in response to the Exchange Act Coordinating Release. The Commission will consider the issue as part of its final action with respect to the pro forma proposals.

[33] In addition, the amendment to Item 5 is intended to clarify that reports on Form 8–K may be used as vehicles to file information or exhibits with the Commission which otherwise would require disclosure in a Form S–3 or would necessitate a post-effective amendment thereto.

[34] Disclosure of matters submitted to a vote of security holders by certain wholly-owned subsidiaries is not required by Form 10–Q.

[35] *See* Release No. 33–5893 (December 23, 1977) [42 FR 65554].

[36] The disclosure requirements being added to Regulation S–K were taken from Guides of general applicability (*See* the Guides Release and the S–K Release), from Regulation C provisions containing disclosure requirements (*See* the Regulation C Release), and from various rules and forms. The Commission has endeavored, to the extent practicable, to make the disclosure requirements of the various Securities Act and Exchange Act rules and forms consonant by substituting the uniform disclosure items of Regulation S–K for existing disclosure items. This substitution of Regulation S–K items has occurred in almost every form to some extent and is discussed in greater detail in the Securities Act Coordinating Release and the Exchange Act Coordinating Release, as well as in relation to amendments to particular forms discussed above. In addition, where forms contained a preexisting reference to an Item of Regulation S–K, the references have been revised to reflect the reorganized structure of Regulation S–K, as now adopted.

[37] The next step will be to expand Regulation S–K to include a list of currently applicable interpretive releases relating to disclosure in Commission filings to which Regulation S–K is applicable.

[38] See the 1982 Industry Guides Release.

[39] It should be noted that Items 401, 402 and 403 vary from those included in the S–K Release to the

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suggestions with respect to the Items will be considered in connection with such future rulemaking projects. Several changes have been made in Item 101, however, principally for clarification purposes.

Reference to required updating has been revised throughout the Regulation, including paragraphs (b)(2) and (d)(3) of Item 101, to make clear that such requirements apply where interim financial statements are included voluntarily, as well as where they are required by Regulation S–K to be included in the document.

Paragraph (c)(vii) has been revised to require the name of certain customers of the registrant and its subsidiaries only where the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole.

Paragraph (d) reflects two changes which make it parallel the provisions of paragraph (b) of Item 101. Subparagraph (1) refers to operating profit and loss of the registrant's geographic area, rather than profitability and permits cross-reference to the financial statements where the required information is included therein. Neither of these revisions is intended to effect a substantive change.

3. *Item 102—Description of Property.* Item 102 has been amended to delete the requirements of paragraph (b) with respect to oil and gas operations. The Commission's proposal to move the provisions of paragraph (b) into an Industry Guide was overwhelmingly endorsed by the commentators and such relocation has been effected.[40] The provisions of paragraph (b) have been reformulated, without substantive change from those proposed in the S–K Release, as new Industry Guide 2 (Disclosure of Oil and Gas Operations).

While the Commission requested comment with respect to possible revision of Item 102 to permit disclosure of any kind of reserves with appropriate discussion, it has determined to postpone any consideration of such a change until the Financial Accounting Standards Board (the "FASB") completes its review of disclosures concerning oil and gas producing activities.[41]

Instruction 5 to Item 102 was proposed to be revised to permit disclosure of less than proved or probable reserves in certain cases where the staff of the Commission could be shown that such disclosure was required by foreign law or was necessary to prevent the disclosure from being misleading. The conditions proposed as the basis for inclusion of such information were the subject of commentator criticism. As a result, Instruction 5 has been revised to permit disclosure of less than proved oil and gas reserves, or proved or probable reserves in other cases, where such information is required by foreign or state law to be disclosed in the document. The Instruction now also permits such reserve data to be disclosed where it has been provided previously to a person (or any of its affiliates) that is engaged in an acquisition of the registrant or its equity securities.

4. *Items 103—Legal Proceedings.* Instruction 5 of proposed Item 103 reflects the adoption of amendments to the instruction relating to environmental disclosure which the Commission proposed in May 1981.[42] The proposed amendments were designed to establish thresholds for disclosure of environmental proceedings involving governmental authorities and would have required that registrants list, or make available upon request, the names and addresses of those governmental authorities from which to obtain compliance-related reports associated with disclosable environmental proceedings.

Most commentators who addressed the general effect of the proposals believed that adoption of materiallity thresholds similar to those proposed would alleviate many of the problems experienced with the existing requirements. Clause (a) of Instruction 5, which requires disclosure of all environmental proceedings, including governmental proceedings, that are material to the business or financial condition of the registrant, was overwhelmingly endorsed by the commentators and is adopted without change.

Clause (b) of Instruction 5, which requires disclosure of damage actions or governmental proceedings involving potential monetary sanctions, capital expenditures, deferred charges or charges to income in which the amount involved, exclusive of interest and costs, exceeds 10 percent of current assets on a consolidated basis, was supported by the commentators, and it, too, is being adopted as proposed.

Proposed clause (c) would have required disclosure of governmental proceedings involving potential monetary sanctions unless the registrant reasonably beleives that such proceedings will result in fines of less than $100,000. Although a majority of the commentators supported the addition of a dollar amount threshold, many contended that, in view of the difficulty in making meaningful predictions about the outcome of pending proceedings, it would be preferable to base disclosure on the actual damages imposed at the conclusion of the proceeding. The Commission believes, however, that after-the-fact disclosure would be less useful to investors and that the "reasonable belief" standard is appropriate because, as a number of commentators pointed out, it is similar to the standard registrants currently utilize for determining the proper accounting treatment of financial contingencies.[43] The majority of commentators opined that the proposed $100,000 figure would be appropriate if the reasonable belief standard were adopted.

Several commentators believed that a burdensome data collection and evaluation effort would be required in order to determine whether the potential fines likely to be imposed in similar proceedings would meet the $100,000 threshold of clause (c). In response to this concern, the definition of "proceeding" is revised to clarify that aggregation of similar proceedings is not required for purposes of clause (c). It should be noted that since clause (c) concerns proceedings involving potential monetary sanctions, permit proceedings and requests for waivers or variances would not be disclosable pursuant to clause (c).

Several commentators asserted that the increasing number of legislative and regulatory provisions which arguably relate to environmental matters sometimes makes it difficult to determine whether disclosure is

extent that the revisions proposed in Release No. 34–17517 are not reflected and the currently effective provisions of Items 4 and 6 of Regulation S–K which were proposed to be revised have been reinstated. *See* Note 2, *supra.*

[40] *See* the 1982 Industry Guides Release.

[41] The Commission notes that the possible revisions of Item 102 elicited a wide range of responses. Three commentators supported the possible revision. Three commentators believed such disclosure is too speculative and would be generally misleading. Four other commentators suggested that the FASB project may have some bearing on this issue and therefore that the Commission may wish to wait until the FASB completes its project. *See* FASB Invitation to Comment on Disclosures About Oil and Gas Producing Activities (May 13, 1981).

[42] Release No. 33–6315 (May 4, 1981) [46 FR 25638]. 110 comment letters were submitted and are available for public inspection and copying at the Commission's Public Reference Room (File No. S7–884). The Commission has placed in the files a copy of highlights of the public comments prepared by the Division of Corporation Finance.

[43] *See generally,* Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 5: Accounting For Contingencies* (1975).

required because of the Instruction's reference to proceedings arising from provisions "* * * otherwise relating to the protection of the environment." In order to eliminate any ambiguity in the language, the Commission is substituting the phrase "or primarily for the purpose of protecting the environment." Another change provides that aggregration of proceedings only is required with respect to proceedings involving the same "legal and factual" issues. Accordingly, the Commission is adopting clause (c) as proposed and amending the definition of "proceeding" in the manner described above.[44]

There was extensive adverse reaction to the proposal to delete the current provision allowing similar legal proceedings to be grouped and described generically. Because generic descriptions would be more efficient and may be more intelligible to investors, the option of a generic discussion is being retained in the final form of the Instruction.

Most commentators criticized the proposal to require disclosure of the governmental authorities from whom compliance-related reports can be obtained. In view of these objections and the absence of any expressed desire for such information by a substantial number of investors, the Commission is withdrawing this proposed requirement.

Finally, the Commission solicited comment on the need for, and feasibility of, an additional provision which would require brief aggregate disclosure of the number of, and total amount involved in, governmental proceedings not otherwise subject to disclosure under proposed clause (a), (b) or (c). A large number of commentators argued that such a provision would reimpose most of the administrative burdens the proposed revisions sought to eliminate and that the resulting disclosures would be meaningless and confusing to investors. Consequently, the Commission has determined not to adopt such an additional provision.

5. *Item 201—Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matter.* Other than clarifying changes, only two substantive changes have been made to Item 201. The first revises the "over-hang" disclosure required. The Commission has determined that specific disclosure requirements with respect to securities "over-hanging" the market for a registrant's common equity is needed primarily where common equity securities are being registered on a Form S–1 or Form 10 and there is no established public trading market for such securities. In such cases, the likely development of a public trading market and the commencement of public reporting under the Exchange Act gives rise in itself to the possibility of a material market overhang. The deletion of the specific requirements of proposed paragraph (a)(3) with respect to market overhang does not rescind the general disclosure obligation to set forth those facts that the registrant knows which reasonably suggest that the historical market prices reported will be materially adversely affected by securities overhanging the market for the registrant's common equity. Further, the reference in paragraph (a)(2) to common equity "which may be registered under the Securities Act for sale by security holders" has been revised to refer to common equity "that the registrant has agreed to register under the Securities Act for sale by security holders."

Paragraph (c) has been amended to permit cross-reference to descriptions of dividend limitations and discussion thereof in the financial statements and the management's discussion and analysis of financial condition and operating results, thereby eliminating duplicative disclosure of the terms of such restrictions. Where the current or future payment of dividends is, or is reasonably expected by the registrant to be, materially limited, such fact still must be noted in connection with the disclosure of information concerning dividends paid in the last two fiscal years.

Instruction 5 defining common equity has been deleted because a definition of common equity is included in Regulations C and 12B as adopted herein.

6. *Item 202—Description of Registrant's Securities.* In addition to clarifying changes, Item 202 incorporates one major revision. Paragraph (a)(5) with respect to antitakeover provisions has been revised substantially. A number of provisions previously specified in paragraph (a)(5), such as classification of the board of directors, super-majority rules and restrictions on alienability of the stock are addressed in the list in paragraph (a)(1) of disclosable terms of the securities. Paragraph (a)(5) has been redrafted to require a discussion of the effect on control of the registrant of certain charter and by-law provisions where such provisions are effective only in the case of a major corporate transaction, such as a merger, liquidation, sale of substantially all assets or tender offer, and where they would delay, deter or prevent a change in control of the registrant.

7. *Item 301—Selected Financial Data.* Item 301 has been amended to delete all reference to the ratio of earnings to fixed charges. The requirements applicable to disclosure of such ratio are included in Items 503 and 601 of Regulation S–K.

Instruction 2 to the Item also has been revised to delete reference to the qualified auditor's report and to require instead a brief note as to matters affecting the comparability of the five year information, as well as certain contingencies.

8. *Item 302—Supplementary Financial Information.* As the Commission noted in the S–K Release, because the criteria specified in paragraph (a) as to registrants required to include certain historical quarterly financial data appear to have little relevance to those upon which the integrated disclosure system is based, the Commission anticipates undertaking a reconsideration of the requirements in paragraph (a) in the near future.[45]

9. *Item 503—Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Provisions regarding disclosure of the ratio of earnings to fixed charges are being adopted as paragraph (d) of Item 503.[46] The provisions are located in the Registration Statement and Prospectus Provisions section of the Regulation because the ratio only is being required in certain Securities Act filings.

In addition to editorial changes of a clarifying nature, the proposed ratio rules have been changed in the

[44] Several commentators raised questions about the types of matters covered by the term "proceeding." In a previous interpretive release the Commission expressed its views regarding the scope of the definition of "proceeding" and registrants should consult this release for further guidance. Release No. 33–6130 (September 27, 1979) [42 FR 44860].

[45] Item 302(b) has been revised to reflect the issuance of Statement of Financial Accounting Standards No. 54, "Financial Reporting and Changing Prices: Investment Companies."

[46] The requirements governing disclosure of the ratio of earnings to fixed charges were proposed initially in Release No. 33–6285 (February 6, 1981) [46 FR 12756] and reproposed without change in the S–K Release. No amendments to those provisions of Rules 13e–3 (17 CFR 240.13e–3) and 13e–4 (17 CFR 240.13e–4) and Schedules 13E–3 (17 CFR 240.13e–100) and 13E–4 (17 CFR 240.13e–101)[relating to the ratio of earnings to fixed charges are being adopted because the Commission believes the transactions subject to those rules present unusual disclosure issues. Until reexamination of the ratio requirements in these rules, registrants are expected to compute the ratios in accordance with the Item 503(d) provisions adopted today.

Accounting Series Release ("ASR") Nos. 119 and 122 are being rescinded and Topics 3B and 9B of Staff Accounting Bulletin ("SAB") No. 40 are being withdrawn in a concurrently issued release because they discuss elements of the computation of the ratio which are covered in the new rules. *See* Accounting Series Release No. 307 (March 3, 1982).

following respects. First, the present practice of requiring the ratio of earnings to fixed charges in debt offerings and the combined ratio in preferred stock offerings is being retained. The Commission agrees with the view of many of the commentators that the combined ratio may not be meaningful to a potential debtholder since the preferred stockholder has a subordinate claim on the registrant's earnings. Of course, registrants may choose to disclose one or both ratios in other filings.

Second, the proposal has been revised to incorporate Topic 9B of Staff Accounting Bulletin No. 40, which requires disclosure of the ratio of a registrant's parent as well as the registrant's ratio when the registrant's parent company is artificially maintaining the registrant's ratio of earnings to fixed charges, for example, in order to meet the minimum borrowing standard stipulated by a state agency. In addition, disclosure of the parent's ratio is required if the registrant's parent is guaranteeing the registrant's debt securities or preferred stock.

Third, the proposed definition of earnings for purposes of computation of the ratio has been changed to exclude earnings from discontinued operations. Commentators believed that comparisons between years and companies would be facilitated by computation of the ratios on the basis of only continuing operations because such earnings are more stable and consistent.

Finally, Item 503(d) permits an earnings adjustment equal to the amortization of current and prior year's capitalized interest. Many commentators agreed that such an adjustment was desirable but noted the problems involved in requiring such an adjustment in all situations.

10. *Item 504—Use of Proceeds.* Instruction 6 has been revised to delete the "reasonably probable" test objected to by the commentators as too vague. Instead, the exception to the disclosure required by Instruction 6 will be available only where Regulation S–X would not require inclusion of financial statements of the company to be acquired and disclosure of the required information would jeopardize the acquisition.

11. *Item 506—Dilution.* The requirement to discuss dilution has been revised to minimize instances where such disclosure would be required of more seasoned companies whose securities are selling on the basis of earnings, and where dilution of book value generally is not material to the investor.

12. *Item 508—Plan of Distribution.* A new paragraph (j) has been added to this item to elicit disclosure regarding any principal underwriter's intentions to sell to their discretionary accounts. As was the case pursuant to previous Item 2 of Form S–1, this disclosure is required only where the registrant was not subject to Exchange Act reporting requirements.

13. *Item 510—Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* As noted above, paragraph (a) of proposed Item 510 is adopted as Item 702 of Regulation S–K. Item 510 as adopted is comprised of paragraph (b) of proposed Item 510 without substantive change.

14. *Item 512—Undertakings.* The undertaking specified in paragraph (a) has been revised by adding an instruction regarding managing underwriters as described below in the discussion of shelf registration.

15. *Item 601—Exhibits.* A number of revisions have been made to Item 601 as proposed in the S–K release. The majority of these changes have been made in response to public comment and seek to clarify the description of the various exhibit items. Other revisions have been made in order to implement certain aspects of the integrated disclosure system.

a. *Revisions to the exhibit table.*[47]— Instruction 2 to the exhibit table has been revised in order to make clear that an exhibit filed with the Commission in connection with a Securities Act registration statement subsequently may be incorporated by reference as an exhibit to an Exchange Act report, even if such exhibit was not previously filed with every exchange on which the registrant's securities have been listed.

Exhibit Item 1 [Underwriting agreements] will be required to be filed with all underwritten offerings on Form S–14, although this requirement had been proposed to be deleted.[48] After reconsideration, the Commission has determined that this exhibit may be relevant in connection with transactions registered on that Form.

Exhibit Item 2 [Plan of acquisition, reorganization, arrangement, liquidation or succession] will be required to be filed with a report on Form 10–Q where such plan is described in the report. This change is made for clarification only, as Exhibit Item 19 [Previously unfiled documents] otherwise would require that this exhibit be filed.

Exhibit Item 9 [Voting trust agreement] will be required to be filed in connection with an annual report on Form 10–K. In light of the importance of this exhibit to shareholders, investors and others and the fact that this exhibit may be incorporated by reference from a previously filed document, the Commission does not believe that this requirement will place an undue burden upon registrants.

Exhibit Item 12 [Statement re computation of ratios] will be required to be filed with all Securities Act registration statements for debt or preferred stock offerings.

b. *Revisions to the description of exhibits.*— Exhibit Item 1 [Underwriting agreement], as revised, may be filed with a report on Form 8–K, where such report is incorporated into a registration statement subsequent to its effectiveness.

Exhibit Item 4 [Instruments defining the rights of security holders—including indentures] has been revised for clarification and, with respect to Forms 8–K and 10–Q, to delete the requirement to file the exhibit where additional securities or indebtedness of a class outstanding are issued or reissued. Because the information elicited by such requirement is already on file with the Commission, there is no need for registrants to refile it.

Exhibit Item 5, paragraph (ii) [Opinion re legality] has been revised for clarification in response to public comment. The description, as revised, allows registrants to file either an opinion of counsel or an Internal Revenue Service determination letter regarding the legality of securities issued pursuant to a plan subject to the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) both when the plan is adopted originally and when it is amended subsequently.

Exhibit Items 6 [Opinion re discount on capital shares] and 7 [Opinion re liquidation preferences] have been amended in response to comment to allow counsel to refer specifically to any applicable constitutional or statutory provisions in his opinion, rather than setting forth each provision.

Exhibit Item 10 [Material contracts] has been revised in response to comment to expand the exemption proposed to be included in paragraph (iii)(B)(6) to exempt wholly-owned subsidiaries of registered companies from filing copies of remunerative plans, contracts or arrangements in connection

[47] If the revisions to Form S–18 (17 CFR 239.28) are adopted as proposed, the exhibit table will be revised further to include a column setting forth those exhibits which will be required to be filed with such form. *See* Release No. 33–6388 (March 3, 1982).

[48] *See* the S–K Release, 46 FR at 41936.

with the registration of non-voting preferred stock on Form S–2.

Exhibit Item 12 [Statement re computation of ratios] has been revised for clarification.

Exhibit Item 15 [Letter re unaudited financial information], as revised, may be filed with a report on Form 10–Q, where such report is incorporated by reference into a Securities Act registration statement. This revision has been adopted to give registrants the option of filing this letter with their Form 10–Q report, with their Securities Act registration statement or as an amendment thereto.

Exhibit Item 19 [Previously unfiled documents], which is primarily a quarterly updating requirement, has been rewritten for clarification only.

Exhibit Item 22 [Subsidiaries of the registrant] has been amended to allow registrants to incorporate by reference their list of subsidiaries if an accurate and complete list is contained in one document previously filed with the Commission.

Exhibit Item 24 [Consents of experts and counsel] has been revised to implement Rule 439. This revision gives registrants the option of filing an otherwise required consent as an exhibit to a report on Form 8–K, 10–Q or 10–K when such report is incorporated by reference into a Securities Act registration statement subsequent to its effectiveness.

Exhibit Items 24 and 25 [Power of attorney] have been revised to make clear that consents or powers of attorney may be filed in a separate part of the registration statement or document filed therewith, so long as a reference is made in the exhibit index to the part of the registration statement or document which contains such consent or power.

Exhibit Item 26 [Statement of eligibility of trustee] has been revised to make clear that such statement, contained in a Form T–1, is also a filing under the Trust Indenture Act of 1939 and, therefore, for the convenience of the staff, shall be separately bound.

16. Item 702—*Indemnification of directors and officers.*—This item is taken without substantive change from paragraph (a) of Proposed Item 510.

C. *Security Ratings.*—In the Security Ratings Release, the Commission announced its determination to permit registrants to disclose, on a voluntary basis, ratings assigned by nationally recognized statistical rating organizations ("NRSROs") to classes of debt securities, convertible debt securities and preferred stock in registration statements and in periodic reports. Prior to that time, the Commission staff has discouraged disclosure of security ratings except in limited circumstances.[49]

The Commission, however, had been reconsidering its position against disclosure of security ratings for several years. Public comment was solicited in 1977 concerning, among other things, the appropriateness of encouraging or requiring ratings disclosure and the impact of subjecting rating organizations to potential liability as experts under Section 11 of the Securities Act in connection with ratings disclosed in registration statements.[50] On the basis of the comments received on the 1977 Release, the Commission had determined that it would not be appropriate to mandate disclosure of ratings. Nonetheless, it recognized the importance of security ratings to investors and the marketplace and the significance attached to ratings by various regulatory entities.

After further considering the benefit that investors may derive from security ratings disclosure and determining to condition the availability of proposed Form S–3, for certain issuers registering investment grade non-convertible debt securities, on the rating assigned to such securities by an NRSRO, the Commission determined to permit disclosure of ratings in registration statements and in periodic reports. In the Security Ratings Release, the Commission set forth its views on certain matters to be considered when including a rating, such as the inclusion of additional information, additional ratings and rating changes.

The Commission also proposed two rule amendments to facilitate disclosure of ratings. First, a new paragraph (g) was proposed to be added to Rule 436 under the Securities Act to provide that a rating assigned by an NRSRO to debt and convertible debt securities and preferred stock would not be considered a part of a registration statement under Sections 7 and 11 of the Securities Act. The rule amendment would eliminate the requirement to file the consent of any NRSRO in connection with any registration statement disclosing such a rating, thus exempting the NRSRO from section 11 liability. The proposed exemption from section 11 liability was based on the practical problems of requiring the consent of NRSROs and the recognition that such organizations already are subject to the antifraud provisions of the federal securities laws.[51] Second, Rule 134 under the Securities Act was proposed to be amended to permit disclosure of security ratings assigned by NRSROs to debt and convertible debt securities and preferred stock in certain communications deemed not to be a prospectus ("tombstone advertisements") on the basis that such disclosure is consistent with disclosure of security ratings in registration statements.

The Commission received approximately forty comment letters on its new policy and related proposals. Although some commentators objected to disclosure of security ratings in Commission filings under any circumstances, the majority of commentators supported voluntary disclosure of ratings and the proposed amendments. Commentators did request, however, additional guidance as to the application and operation of the new policy and rules.

The Commission continues to believe that ratings should be permitted to be disclosed in Commission filings and tombstone advertisements and that it is appropriate to exempt NRSROs from Section 11 liability if their ratings are included in Securities Act registration statements. Accordingly, the Commission today is affirming its new policy and adopting the proposed amendments to Rules 436 and 134.[52]

Furthermore, although disclosure of security ratings remains entirely voluntary, the Commission, as suggested by commentators, is setting forth its views on ratings disclosure in Regulation S–K in order to provide additional guidance and certainty. The Commission believes inclusion of the policy in Regulation S–K is consistent with the Regulation's function as the repository of uniform disclosure requirements and with the treatment of the Commission's policy on projections, which also is set forth in Regulation S–

[49] Security ratings have been permitted in investment company registration statements provided the rating organization's consent, or a waiver of consent, has been obtained. In addition, material changes in security ratings of registrants' outstanding securities may be reported under Rule 408 under the Securities Act (17 CFR 230.408), Rule 12b–20 (17 CFR 240.12b–20), Rule 14a–9 (17 CFR 240.14a–9) of Schedule 14A under the Exchange Act or Item 5 of Form 8–K.

[50] Release No. 33–5882 (November 3, 1977) [45 FR 58414] (the "1977 Release").

[51] Section 17(a) of the Securities Act and section 10(b) of the Exchange Act and Rule 10b–5 (17 CFR 240.10b–5) thereunder; and when registered as investment advisers, NRSROs are subject to section 206 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)

[52] The Commission wishes to make clear that its new policy and rules are limited to disclosure of security ratings. They do not extend to disclosure of policyholder ratings assigned to insurance companies. The Commission recently solicited public comment on whether disclosure of policyholder ratings should be permitted (Release No. 33–6376 (January 11, 1982) [47 FR 3130]) and will resolve that issue after it has had an opportunity to consider any comments that may be received.

K. The policy on security ratings, which is included in Regulation S–K after the policy on projections as paragraph (d) of the General section, clarifies the views of the Commission expressed in the Security Ratings Release, with certain modifications suggested by commentators or otherwise deemed appropriate.

The policy statement provides that ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock may be included in registration statements [53] and in periodic reports. The statement thus makes clear that disclosure of security ratings is not limited to Securities Act registration statements, but extends to certain Exchange Act filings as well. In addition, the statement makes clear the Commission's determination to permit disclosure of security ratings by rating organizations other than NRSROs.[54] The Commission believes that, if a registrant determines that the rating of a non-NRSRO would be of interest to investors and the marketplace, it should not be prevented by the Commission from including such rating in its registration statement or periodic report.[55]

The statement also provides that security ratings assigned by NRSROs may be included in tombstone advertisements pursuant to Rule 134.

In paragraphs (1) (i) through (iii), the policy statement provides the Commission's views on certain matters, including additional disclosures, to be considered when including a security rating in a Securities Act filing.[56] Paragraph (1)(i) sets forth certain basic considerations when filing a registration statement that includes a rating. First, the registrant should consider including every other available rating intended for public dissemination assigned to such class by an NRSRO that is materially different from any rating disclosed. The Commission has determined that, contrary to its position in the Security Ratings Release, it is not necessary for registrants to include additional available ratings that are not materially different.[57] The clause "intended for public dissemination" in paragraph (1)(i) makes clear that disclosure of non-public ratings or of non-public preliminary indications of a rating is not intended.

Second, a registrant also should consider including certain limited additional information to provide the reader with a concise explanation of the fundamental characteristics of security ratings and to make clear the source of the rating from which an investor may obtain more detailed information. In this regard, the Commission does not intend that registrants include lengthy and detailed explanations of the ratings process. However, it does not agree with certain commentators that information other than the rating and name of the rating organization is so easily accessible that it would not be useful to investors and that it would be unduly burdensome for registrants to disclose. A concise explanation of the meaning of a rating would appear to be very helpful to investors, particularly in the case where more than one rating is disclosed, and would help to ensure that investors do not place undue emphasis on such ratings.

Third, if a registrant includes a rating assigned by a rating organization that is not an NRSRO, it should include the written consent of such organization as is required under section 7 of the Securities Act. With respect to ratings assigned by NRSROs, the registrant is referred to Rule 436(g) which contains the exemption from filing such organizations' consents.[58]

Paragraphs (1) (ii) and (iii) of the policy statement set forth the Commission's views concerning the appropriate considerations in the event materially different additional ratings or rating changes become available subsequent to the filing of the registration statement. Paragraph (1)(ii) provides that, if a rating that was disclosed in the registration statement changes prior to the registration statement's effectiveness, the rating change generally should be disclosed in the final prospectus. However, if there is a material change in a disclosed rating or if a materially different additional NRSRO rating becomes available, the registrant should consider amending the registration statement to disclose the additional rating or rating change and recirculating the preliminary prospectus.

The "materially different" standard, used in paragraph (1)(ii) to indicate when an additional NRSRO rating might necessitate amending the registration statement, has been substituted for the "substantially different" standard contained in the Security Ratings Release to provide more guidance to registrants and to avoid placing excessive burdens on registrants to amend their filings. Likewise, whereas the Security Ratings Release advised consideration of an amendment to the registration statement and recirculation of the preliminary prospectus in the case of any change in a disclosed rating, the policy statement makes clear that such consideration is appropriate only in the case of a "material change."

Paragraph (1)(iii) provides that, if a materially different additional NRSRO rating becomes available after effectiveness of the registration statement, or if there is a material change in a disclosed rating at any time while offers and sales are being made, the registrant should consider disclosing such additional NRSRO rating or rating change by means of a post-effective amendment or sticker to the prospectus pursuant to Rule 424(c) under the Securities Act. However, in the case of a registration statement on Form S–3, the registrant may incorporate such information by reference. As in paragraph (1)(ii), the "materially different" and "material change" standards are used to provide guidance

[53] In the case of investment company registration statements, such ratings may be included for debt securities being registered or in connection with the company's schedule of portfolio debt securities. In addition, investment companies will continue to be permitted to include security ratings assigned to their equity securities being registered, but may not be able to rely on Rule 436(g) in connection with such ratings in view of the Rule's limitation to debt and convertible debt securities and preferred stock.

[54] The term "nationally recognized statistical rating organization" is stated in Rules 436 and 134, adopted today, to have the same meaning as in the Commission's uniform net capital rule. (17 CFR 240.15c3–1(c)(2)(vi)(F)). Several commentators objected that the net capital rule does not contain any specific definition of the term, and that, accordingly, rating organizations that are not NRSROs are not provided with sufficient guidance as to how to qualify as such. The Commission is not aware at this time of any substantial burden being imposed on rating organizations that are not NRSROs due to any absence of guidance in this area. Currently, the following organizations are accepted as NRSROs under the net capital rule: Standard & Poor's Corporation; Moody's Investors Services, Inc.; Fitch Investors Services, Inc.; and Duff and Phelps, Inc. Accordingly, the Commission believes that the determination made by the Commission staff concerning NRSRO status for net capital rule purposes is sufficient at present for security ratings disclosure purposes.

[55] Inclusion of a rating assigned by a non-NRSRO in a Securities Act registration statement, however, would require the filing of the written consent of the rating organization under Section 7 of the Securities Act.

[56] Additional disclosures, other than the name of the rating organization, may not be necessary in certain circumstances, such as in connection with the inclusion of security ratings in management's discussion and analysis of financial condition and results of operations furnished pursuant to Item 303 of Regulation S–K.

[57] The additional ratings that should be considered to be disclosed are likewise limited to materially different NRSRO ratings in other paragraphs of the policy statement concerning additional ratings assigned subsequent to the filing of the registration statement and additional ratings in Exchange Act filings.

[58] Several commentators expressed concern about the effect the exemption from Section 11 liability for NRSROs would have on the liability of issuers, officers, directors and underwriters in connection with ratings. The Commision notes that disclosure of ratings is optional and, in any event, issuers may seek to obtain an NRSRO's written consent.

and to avoid placing undue burdens on registrants.

Paragraphs (2) (i) and (ii) present the Commission's views as to the appropriate considerations when including a rating in an Exchange Act filing. Paragraph (2)(i) makes clear that, if a registrant includes a rating in an Exchange Act filing, it also should consider including any materially different additional NRSRO ratings and such additional information as would be considered for inclusion in a Securities Act registration statement disclosing a security rating. Finally, paragraph (2)(ii), consistent with current practice, provides that registrants, in the event of a material change in the ratings of their outstanding securities, should consider filing a periodic report disclosing such change.

IV. Procedural Provisions

A. Background

The third aspect of the integrated disclosure system consists of Regulation C and Regulation 12B, which contain the procedures to be used in preparing and filing registration statements and reports under the Securities Act and the Exchange Act, respectively.[59] As part of the rulemaking proceeding to develop an integrated disclosure system, the Commission proposed revisions to Regulations C and 12B to accomplish three objectives. First, revisions were proposed to centralize all disclosure requirements in Regulation S–K.[60] Second, revisions were proposed to establish Regulations C and 12B as the source of procedural requirements in the integrated disclosure system. Prior to this rulemaking proceeding, procedural provisions were found not only in Regulations C and 12B, but also in the Guides and in the instructions to registration forms and reports. Because the provisions in the Guides and the instructions were often duplicative of, and in some situations inconsistent with, the provisions of Regulations C and 12B, the Commission proposed amendments to eliminate duplications and to harmonize inconsistencies.[61] Third, revisions were proposed to modify current rules and to remove obsolete and unnecessary rules as part of a "sunset" review of Regulations C and 12B.[62] Related to the sunset review was a solicitation of public comment on the necessity of restructuring Regulation C.

B. Synoposis of Revisions

The comments received in response to the proposed revisions to Regulations C and 12B supported the Commission's objectives, with the vast majority of the comment directed toward a few specific points of interest for each commentator. However, certain commentators recommended either the development of a new procedural regulation encompassing the procedural provisions of Regulations C and 12B, as well as those of the proxy rules, or a total reorganization of Regulation C. The Commission has determined that a new procedural regulation encompassing all procedural provisions, similar to Regulation S–K for disclosure matters and Regulation S–X for accounting matters, is not appropriate because, unlike certain disclosure and accounting matters, the procedural requirements are not as interchangeable. Procedures for filing registration statements are necessarily different from the procedures for filing proxy statements, because of the different functions which such statements fulfill under the statutes. While there is some overlap in the provisions of Regulation C, Regulation 12B and the proxy regulations, the Commission has determined that the better approach is to eliminate unnecessary inconsistencies among the provisions and to continue the current pattern of separate procedural rules to which a registrant and its counsel can turn easily for specific guidance on the procedures to be used in satisfying statutory obligations.

With respect to the organization of Regulation C, in response to comment, the Commission has determined to locate the rules specifically relating to registration statements for competitive bidding[63] and to investment companies and business development companies[64] under separate headings within Regulation C.

In general, the discussion of the revisions of the rules in Regulation C and of the corresponding revisions of the rules in Regulation 12B follows the organization of Regulation C. Because of the importance of the shelf registration concepts, this subject will be discussed under a separate heading. This discussion will highlight only the significant changes made in the proposed revisions as set forth in the Regulation C Release.[65]

1. *General Requirements.* Several commentators requested that the Commission delete or otherwise modify the final clause of paragraph (g) of proposed Rule 401 which generally provided that the Commission could notify a registrant that the effectiveness of a registration statement would provide no presumption as to the appropriateness of the registration form used by the registrant.[66] They contended that a good faith, but erroneous, determination as to the availability of a registration form should not result in contingent liability for the sale of unregistered securities. Based on these and related comments and the implementation of certification requirements in the signature provisions of the registration forms, the Commission has determined to delete the last clause of Rule 401(g).

The majority of the comments on the Regulation C proposals addressed the definitions in proposed Rule 405 and proposed Rule 12b–2. Certain commentators requested that the Commission retain the current definition of the term "material" or modify the proposed definition. Since the proposed definition is based on the definition as set forth by the Supreme Court in *TSC*

[59] The rules in Regulation C and 12B which have not been revised are not reprinted in this release.

[60] The following disclosure items previously found in Regulation C have been moved to Regulation S–K: the description of securities in Rule 406; the undertakings in Rules 415 and 428; the table of contents requirement in Rule 421; the legend provisions in Rules 425, 425a, 426 and 433; and certain exhibit provisions in Rules 435, 445 and 446.

[61] Corresponding revisions in the registration forms and reports were proposed in the S–1–2–3 Release, the Securities Act Coordinating Release and the Exchange Act Coordinating Release.

[62] No overall review has been undertaken for some time. *See* the Regulation C Release, 46 FR at 41972, for a discussion of the background and the development of Regulations C and 12B.

[63] Current Rules 415, 428 and 471(b) have been recast as Rules 445, 446 and 447, respectively, under the heading "Competitive Bids."

[64] One aspect of a reorganization of Regulation C that was the subject of comment was the rules proposed for registration statements under the Securities Act for investment companies and business development companies. Since the forms for the registration of securities by such companies do not reference Regulation S–K, the provisions of Regulation C which were proposed to be transferred to Regulation S–K were set forth in four special rules, denominated by the letter "y", which were to apply only to investment companies and business development companies. Comment was requested on whether these rules and other rules which apply only to such companies should be located in a special section of Regulation C. Proposed Rule 406y, proposed Rule 425y, Rule 434d, proposed Rule 445y, proposed Rule 461y and Rule 465 have been recast as Rules 480 through 485, respectively, under the heading "Investment Companies; Business Development Companies." Rule 400 has been revised and a note has ben added to Regulation C following such heading to ;make clear that these rules are applicable to such companies in addition to all of the remaining rules of Regulation C.

[65] *See* the Regulation C Release for a complete discussion of all of the proposed revisions to Regulations C and 12B.

[66] *See* the Regulation C Release, 46 FR at 41976, for a discussion of the operation of proposed Rule 401 and the purpose of the last clause of proposed Rule 401(g).

Industries, Inc. v. *Northway*,[67] the Commission has determined to adopt the definition of the term "material" as proposed. Other comments suggested that the definition of the term "executive officer" be revised to limit the scope of the definition by emphasizing policy making functions as the determining factor for classifying a person as an executive officer. The Commission has determined to adopt a uniform definition for the term "executive officer" based substantially on the proposed definition, but revised to emphasize policy making functions.[68] It should be noted that policy making functions would include business and legal decisions. Pursuant to other comments, the definition of the term "significant subsidiary" has been conformed to the definition of that term as adopted by the Commission in Regulation S–X.[69] A definition of the term "common equity" has been adopted because it is used in several places[70] and a definition of the term "business development company" has been added to avoid repetitious references. A definition of the term "managing underwriter" has been added in response to comment received on the Rule governing shelf registration.

Rule 485 relating to confidential treatment of contracts has been recast as Rule 406.

The commentators made various suggestions relating to the rules governing incorporation by reference. Certain language changes have been made to clarify the procedures of incorporation by reference. Other changes made pursuant to comment include, most notably, the incorporation of the substance of Rules 422 and 12b–24, dealing with summaries of documents, into revised Rules 411 and 12b–23 respectively.

The incorporation by reference rules are an important aspect of the operation of the integrated disclosure system. Pursuant to Rule 24 of the Commission's Rules of Practice (17 CFR 201.24), incorporation of information by reference to a document may not be made if the referred to document incorporates by reference a third document; except where incorporation by reference is expressly required. Under the Securities Act in Rule 411, subject to Rule 24, incorporation of information may be made by reference to any document filed with the Commission; except that with respect to a prospectus, information may be incorporated by reference only where the particular registration form so permits or to qualify a required summary or outline of a document. Under the Exchange Act in Rule 12b–23, subject to Rule 24, incorporation of information may be made by reference to any document, provided that such document is filed as an exhibit to the Exchange Act report or statement; except that information or documents required to be filed as exhibits to an Exchange Act report or statement may be incorporated by reference if previously filed with the Commission and no additional filing is required.

Rule 414 has been revised in response to comment to extend the coverage of the rule to certain intrastate reorganizations, where the issuer is changing only its form of organization, such as a trust to a corporation or vice verse. The extension of Rule 414 to such intrastate reorganizations is conditioned on the satisfaction by the successor issuer of the requirements of paragraphs (a) through (d) of Rule 414.

Because proposed Rule 418 has been recast as Rule 412,[71] proposed Rule 419 (Supplemental information) has been recast and adopted as Rule 418.[72] In addition to certain minor revisions, the Commission has determined to delete the paragraph on information concerning the underwriter's due diligence investigation with respect to new registrants and issues of securities about which certain risk factors are required to be disclosed.[73]

Other minor revisions have been made to the rules comprising the General Requirements.

2. *Shelf Registration.* Rule 415 is a temporary rule, effective until December 10, 1982, which governs the registration of securities that are to be offered and sold on a delayed or continuous basis in the future ("shelf registration").[74] The Rule codifies staff practice concerning shelf offerings which have occurred to date, such as securities to be offered in a continuing acquisition program.[75] Under certain circumstances, it contemplates shelf registration for primary offerings of equity securities which the registrant intends to sell on a non-fixed price basis over time depending on market conditions. Also, the Rule contemplates an issuer's selling the securities registered on the shelf in a succession of different kinds of offerings.

A substantial number of commentators expressed views on the shelf rule proposal ranging from support for the rule, as proposed or with modifications, to concern that the proposal would have worked potential impacts upon the capital raising process.[76] Recognizing the importance of the views and concerns of the commentators, the Commission is taking a series of procedural steps to afford the opportunity for continued consideration of shelf registration and is adopting the Rule, with modifications, on a temporary basis.

The procedural steps will include public hearings to explore the impact of a shelf registration rule and to give all interested parties further opportunity to present their views to the Commission. The hearings will be announced officially in a separate release published in the near future and will begin in approximately four months. During the period prior to the commencement of the hearings, interested investors, registrants and members of the securities industry may wish to form groups or task forces to organize and prepare their presentations. Following the hearings, the Commission may publish further rulemaking proposals for notice and comment.

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[67] 426 U.S. 438 (1976). *See* the Regulation C Release, 46 FR at 41977–8, for discussion of the *Northway* standard.

[68] The same definition is adopted for the Exchange Act in Rule 3b–7. As a result, definitions of the term "executive officer" previously found in Rule 13e–3, Rule 13e–4, Schedule 13D [17 CFR 240.13d–101], Rule 14a–3, Rule 14c–3 [17 CFR 240.14c–3] and Rule 14d–1 [17 CFR 240.14d–1] under the Exchange Act; and Instruction 1(b) to Item 4(a) of Regulation S–K have been deleted.

[69] *See* Release No. 33–6359.

[70] This definition is derived from the definition of the term "common equity" in Instruction 5 to proposed Item 201 of Regulation S–K. *See* the Regulation S–K Release, 46 FR at 41946.

[71] *See* discussion of liability issues in Part V, *infra*.

[72] A supplemental information rule has been added to Regulation 12B: Rule 12b–4.

[73] The deletion of this paragraph does not affect the Commission's view that, "[a] thorough and intensive underwriter's investigation is especially important in an initial public offering by companies in the development stage or those dealing with 'high technology' products or processes. Release No. 33–5275 (July 27, 1972) [37 FR 16011 at 16013].

[74] The Rule was first proposed in the Guides Release as proposed Rule 462A. It was reproposed, again as proposed Rule 462A, in conjunction with the Commission's proposed integration program in the "Shelf Release." These two proposing releases contain extensive discussion of the background and issues relating to shelf registration.

[75] It should be noted that Rule 415 replaces former Guide 4 and various no-action and interpretive letters issued by the staff concerning particular offerings to be made on a delayed or continuous basis. Accordingly, registrants should no longer rely on previous staff positions and letters and comply with Rule 415.

[76] In addition to the 55 comment letters on the shelf rule proposal (File No. S7–896) received during the official comment period ending October 30, 1981 or shortly thereafter, the Commission received 44 comment letters in the seven weeks preceding its consideration of the shelf rule on February 24, 1982. These 44 letters are not included in the comment highlights prepared by the Division of Corporation Finance (*See* Note 12, *supra*), but were accepted and included in the public record and are available for public inspection and copying at the Commission's Public Reference Room (File No. S7–896). *See* 17 CFR 202.6(b).

The temporary Rule will be effective until December 10, 1982. During that period, the Commission will monitor the operation and impact of the new Rule. Prior to the temporary Rule's expiration, the Commission expects that the further proceedings noted above will have been concluded and a determination will be made whether to adopt Rule 415 as a permanent rule, adopt a modification of Rule 415 or allow the Rule to expire.[77]

Rule 415 reflects changes from the proposal in two respects: (1) the addition of two further conditions for primary, at the market offerings of equity securities and (2) the clarification of related Item 512(a) of Regulation S–K (undertakings to file post-effective amendments) and Rule 405 (definitions) with respect to managing underwriters. The following discussion is intended to clarify certain issues raised by commentators in response to the proposed Rule and to highlight the changes made in the proposals. Because the Guides Release and the Shelf Release discussed in detail the background and major issues of shelf registration, as well as the essential features of the Rule, this release does not repeat earlier explanatory material.

a. *Bona Fide Intention to Offer and Sell.*—Rule 415(a)(1)(i) as proposed in the Shelf Release permits registration of any security on a shelf registration statement in an amount that is reasonably expected to be offered and sold within two years of the registration statement's effective date. Some commentators argued that this standard is inappropriate and unnecessary. The Commission adheres to its belief that the flexible, yet measurable, standard provided by the two-year benchmark is a proper condition to the general use of shelf registration statements for primary offerings. Paragraphs (a)(1)(ii) through (a)(1)(vii) of the Rule set forth those types of offerings that in the Commission's experience may be permitted without regard to the two-year standard and are adopted as proposed.

b. *Accurate and Current Information.*—One of the basic concerns which must be met in the context of shelf registration is ensuring that investors are provided accurate and current information where offers or sales are not to be made immediately after the registration statement becomes effective. Rule 415(a)(2) addresses this issue by setting forth when and how updating should be done, *i.e.*, when updating may be done by prospectus supplement pursuant to Rule 424(c) (a "sticker") and when a post-effective amendment to the shelf registration statement is appropriate, by requiring registrants to furnish the undertakings required by Item 512(a) of Regulation S–K to file post-effective amendments in specified circumstances. The Item 512(a) undertakings are adopted substantially as proposed.[78] They relate only to periods in which offers or sales are being made, thus making clear that there is no need to maintain an accurate and current, or "evergreen," prospectus when no offers or sales are being made pursuant to the shelf registration. The circumstances under which registrants must undertake to file post-effective amendments are: (1) To include any 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 (or the most recent post-effective amendment thereto) 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 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.

The provisions relating to updating, particularly respecting "fundamental changes," are intended to reflect current practice in determining the need for a post-effective amendment as opposed to a prospectus sticker. As indicated in the Shelf Release, the Commission believes that the filing of a post-effective amendment is appropriate in certain instances in order to ensure full statutory liability for the information disclosed and to afford the Commission's staff an opportunity to review the 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 the flexibility of current practice within the context of a shelf registration statement.

Most of the commentators who addressed the provisions relating to updating generally supported the proposals. A few commentators, however, requested further guidance as to what constitutes a "fundamental" change and thus makes a post-effective amendment appropriate. While the Commission continues to believe that a detailed listing in Item 512(a) of the situations in which post-effective amendments are appropriate would impair the flexibility of current practice, it does wish to provide some guidance in this area. As the Shelf Release noted, the use of the term "fundamental" is intended to reflect current staff practice under which post-effective amendments are filed when major and substantial changes are made to information contained in the registration statement.[79] Material changes that can be stated accurately and succinctly in a short sticker will continue to be permitted. While many variations in matters such as operating results, properties, business, product development, 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.[80] 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.[81] At the same 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.

[77] The Commission contemplates that, when it takes subsequent action either to adopt Rule 415 on a permanent basis (in the same or revised form) or to withdraw the Rule, registrants with then-effective shelf registration statements pursuant to Rule 415 will be subject immediately to the subsequent action. *See* Rule 401(f).

[78] The Commission is adopting as proposed the requirement in Item 512(a)(2) of Regulation S–K that registrants 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 initial bona fide offering thereof," which results in a new statute of limitations period under Section 13 of the Securities Act. As indicated in the Guides Release and again in the Shelf Release, this undertaking reflects the Commission's view of the law in this area as well as the longstanding staff practice of requiring the inclusion of such an undertaking in many shelf registration statements.

[79] The proposal also reflects the fact that numerous small changes to information in the registration statement can become cumulatively fundamental. Cf. In re Franchard Corporation, 42 S.E.C. 163, 184–85 (1964).

[80] 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.

[81] *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 (available January 17, 1973). These undertakings are subsumed within the undertaking to file post-effective amendments to reflect fundamental changes.

Although such information 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.

With respect to the undertaking to file a post-effective amendment to disclose any material information relating to the plan of distribution, a few commentators urged that it would enhance the flexibility of the shelf rule to allow automatic effectiveness for such post-effective amendments. The Commission does not believe it appropriate to eliminate all possibility of review of such post-effective amendments, but will monitor this area to avoid any undue delays.

Also in connection with the Item 512(a)(1)(iii) undertaking, the Commission noted in the Shelf Release that a sticker supplement to the prospectus could be used to reflect the final terms of the transaction in the circumstance where a registration statement contained a full description of several alternative methods of distribution with the only missing information consisting of numerical details such as price and underwriting spread. The Commission emphasizes, in response to public comment, that in order to permit use of a sticker supplement the registration statement description of such alternative methods of distribution must be complete, omitting only such information as price and spread.[82] If the registration statement names several underwriters who may participate in the shelf-registered offering, the selection of any one or more of those underwriters to be the underwriter(s) with respect to a particular portion of the shelf offering may be indicated by sticker supplement to the prospectus.

The use of a single shelf registration statement for widely diverse plans of financing may be inappropriate in cases where a complete description of each plan of distribution to which the filing relates, together with a discussion of the impact on the issuer of such plan alone and in combination with the other contemplated financings, becomes so complex as to reduce substantially the effectiveness of the disclosures. In such cases, more than one registration statement may be necessary.

Undertaking (a)(1)(iii) of Item 512 of Regulation S–K recognizes the materiality to the plan of distribution of a change in managing underwriter. The proposed Rule did not define the term "managing underwriter," but the Shelf Release generally described the characteristics and duties of a managing underwriter. The release specifically requested public comment regarding the need for a definition, either in Rule 415 or in Regulation C. The commentators had no specific suggestions for a definition of managing underwriter, but two commentators urged codification of the term. The Commission agrees that it would be useful to codify a definition of the term "managing underwriter" and has decided to include the term in the definition section of Regulation C, Rule 405. The definition is similar to the description of "managing underwriter" provided in the Shelf Release. As defined, a "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer; organizes the selling effort; receives some benefit from the underwriting which is not shared by other underwriters; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.[83]

In addition to providing a definition of the term "managing underwriter," the Commission is adding two clarifying instructions to Item 512(a)(1). Instruction (1) states that a post-effective amendment need not be filed to disclose the addition or deletion of a managing underwriter as a co-manager unless there is no longer at least one managing underwriter who was named in the registration statement or the most recent post-effective amendment thereto.[84] This instruction clarifies, in response to public comment, when the addition or deletion of a co-manager must be reflected in a post-effective amendment, as opposed to a sticker supplement to the prospectus. With the addition of Instruction (1) to Item 512(a)(1), there is no need for the phrase "other than as a co-manager" at the end of the last clause of Item 512(a)(1)(iii) and it has been deleted. Instruction (2) addresses the situation where there may be more than one managing underwriter and the relationship of one underwriter to another is that of co-manager.

The Rule 415 undertakings provide an exception to the duty to update in the case of a registration statement filed on either Form S–3 or Form S–8 if the information required to be included in a post-effective amendment pursuant to Item 512 (a)(1)(i) and (a)(1)(ii) of Regulation S–K is contained in periodic reports filed under the Exchange Act and incorporated by reference in the registration statement. Two commentators suggested that registrants filing on Forms S–1 and S–2 also should be able to incorporate by reference subsequently filed Exchange Act reports. As noted in the discussion of Form S–2, the Commission has determined not to allow incorporation by reference of subsequently filed Exchange Act reports on Form S–1 or S–2 because it does not believe that there is sufficiently widespread marketplace following with respect to registrants using those forms to assure sufficient dissemination of information for purposes of the delayed or continuous offering of securities. Thus, the Commission reemphasizes that registrants filing on Forms S–2 or S–1 must meet the duty to update by filing post-effective amendments pursuant to the undertaking in Item 512(a)(1).

c. *Exemptions from Application of Shelf Rule.*—The Commission is adopting as proposed the provisions creating exemptions from the application of Rule 415 for offerings by a face amount certificate company or offerings of redeemable securities by an open-end management company or unit investment trust under the Investment Company Act and for any registration statement filed by any foreign government. The exemption relating to investment companies recognizes the specific provisions for continuous registration which are contained in the Investment Company Act. As indicated in the Shelf Release, foreign government registration statements are exempted because the Commission is still gaining experience with shelf registration by such registrants pursuant to a staff interpretive letter which set forth procedures to be followed by foreign governmental issuers in using a shelf registration that differed somewhat from the proposed Rule.[85] Until such time as the Commission determines whether to codify the interpretive release or

[82] If the plan of distribution description discloses that an offering may be distributed by an underwriting syndicate, the identity of or changes in the identity of the members of the underwriting syndicate may be indicated by sticker. If the registration statement is on Form S–3, which incorporates by reference Exchange Act reports filed subsequent to effectiveness of the registration statement, underwriting agreements or other required exhibits may be filed with a report on Form 8–K.

[83] *See* the Shelf Release, 46 FR at 42008.

[84] The remaining named managing underwriter need not be the "books-running manager."

[85] *See* Release No. 33–6240 (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.

otherwise to address foreign government shelf registration, foreign governmental issuers may continue to use the procedures set forth in the staff interpretive letter.

d. *At the Market Offerings.*—(1) *Conditions.* Rule 415 permits shelf registration of "at the market offerings" of equity securities directly by or on behalf of the registrant. Because such offerings raise concerns for the public and for the marketplace, the Shelf Release proposed the imposition of two conditions. First, the Commission proposed that those securities must be sold through an underwriter or underwriters, acting as principal(s) or agent(s) for the registrant, and that such underwriter(s) must be named in the prospectus which is part of the registration statement. Second, the Commission proposed to define 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.

A number of commentators agreed with the Commission that it should impose conditions upon the availability of shelf registration for an at the market offering. The Commission has determined to adopt the conditions proposed and to adopt two further conditions: (1) That the registrant must meet the registrant requirements and applicable transaction requirements of Form S–3 and (2) that the amount of securities registered must not exceed ten percent of the registrant's non-affiliate float. The Commission is conditioning primary equity offerings at the market on Form S–3 availability and is limiting such offerings to ten percent of a registrant's float in view of the experimental nature of the temporary rule.[86]

The Commission is adopting the requirement for a named underwriter because it believes that the direct involvement of an underwriter can provide a desirable discipline upon such offerings of equity securities into an existing trading market [87] and that the presence of an underwriter helps to ensure that accurate and current disclosure is made to investors in the prospectus and that the prospectus delivery requirements of the Securities Act are met. A few commentators opposed this requirement or expressed concerns about related issues of liability and anti-manipulative rule application. The Commission is confident that the liability concerns will be allayed as both registrants and underwriters gain experience with the shelf rule. In addition, the Commission does not believe that the anti-manipulative rules will impose any unduly burdensome prohibitions upon underwriters named in the prospectus.[88] In this regard, it should be noted that the Commission's monitoring of the shelf rule will include attention to this requirement to determine, among other things, whether it would be appropriate to adopt a provision, as advocated by some commentators, which would require issuers to obtain the underwriter's consent to being named.

(2) *Treatment of Statutory Underwriter.* Rule 415 permits a direct distribution of securities by a registrant into an existing trading market over an extended period of time and thus raises the issue of underwriter status [89] in a novel situation. The Shelf Release set forth the Commission's views as to the status of various market professionals as statutory underwriters in an at the market offering of equity securities by a registrant under the proposed Rule. The views expressed received comment from only four commentators, three of whom generally agreed with the Commission's stated positions. The Commission has determined to reaffirm without change the positions regarding treatment as a statutory underwriter which were published in the Shelf Release.[90]

(3) *Application of Anti-Manipulative Rules.* At the market offerings of securities pursuant to Rule 415 also raise a number of questions concerning the maintenance of orderly market processes, the prevention of market manipulation, and the application of the anti-manipulative rules,[91] specifically the application of Rule 10b–6 (17 CFR 240.10b–6) under the Exchange Act, to these offerings. The Shelf Release contained an extensive discussion of the various Rule 10b–6 issues raised by at the market offerings, set forth a number of staff positions with respect to these issues, and specifically solicited comment on a number of issues.[92]

A substantial number of commentators addressed the Rule 10b–6 issues discussed in the Shelf Release and offered helpful suggestions as to how the Rule could be interpreted or modified to avoid unduly interferring with at the market offerings permitted by Rule 415 while still affording the market sufficient protection from manipulation. In addition, a number of commentators suggested that Rule 10b–6 should be modified generally, not only for purposes of shelf registrations. The Commission has considered these comments and has incorporated its determinations with respect thereto into a separate release proposing amendments to Rule 10b–6 [93] published concurrently with this release. The Rule 10b–6 Release resolves the issues raised in the Rule 415 context as well as analogous issues raised more generally. Attention is directed to that release for the text of the proposed amendments and a complete discussion thereof. In addition, the Rule 10b–6 Release indicates the staff's intention, so long as the issuer qualifies to use new Form S–2 or S–3, to follow the interpretive

[86] It should be noted that Rule 415 is not intended to allow registrants not eligible to use Form S–3 to circumvent the Form S–3 condition on at the market offerings by registering shelf offerings at a fixed price and then using frequent prospectus stickers to change price.

[87] *Cf. In re Hazel Bishop Inc.*, 40 S.E.C. 718, 729–32 (1961).

[88] Under Rule 415(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 an 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 be made without underwriter involvement, provided that such offerings were not made at the market.

[89] 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."

[90] 46 FR at 42011.

[91] The existing regulatory framework includes rules adopted both by the Commission and by the self regulatory organizations.

[92] The issues discussed included: (1) Whether and how to define the term "distribution" for purposes of a shelf offering; (2) when a distribution should be deemed to commence with respect to a shelf registration; (3) what kinds of conditions such as "cooling off" periods should be imposed on registrants engaged in no selling efforts with respect to the shelf-registered securities; (4) whether purchases by affiliates should be treated differently from purchases by registrants; (5) what kinds of conditions should be imposed on purchases by broker-dealers with continuing agreements with the registrant to participate in the shelf offering during periods in which all sales and selling efforts have been suspended; (6) whether to clarify the applicability of Rule 10b–6 to market professionals who purchase securities in connection with a primary shelf offering; (7) whether special problems need to be addressed with respect to registrants and broker-dealers acting on behalf of registrants where there is a combination of conventional fixed price offerings and shelf offerings; (8) whether the staff position with respect to the distribution of research reports should be expanded for purposes of broker-dealers with continuing agreements with the registrant; and (9) whether a staff interpretive position regarding debt securities [Letter re American Telephone and Telegraph Company (February 26, 1975)] should be expanded.

[93] Release No. 34–18528 (March 3, 1982) (the "Rule 10b–6 Release").

positions codified in the proposed amendments on an administrative basis pending adoption of the amendments in order to facilitate the implementation of Rule 415.[94]

3. *Form and Contents of Prospectus.* The revisions to the rules comprising this section of Regulation C have been adopted substantially as proposed. In addition to the rules which were deleted because their substance was transferred to Regulation S–K, the Commission has determined to rescind Rules 430, 431, 432, 434[95] and 434c as unnecessary or obsolete. In light of such rescissions, current Rules 433, 434a and 434b have been recast as Rules 430, 431 and 432. Pursuant to comment and its own experience, the Commission has determined to revise proposed Rule 434a (renumbered as Rule 431), concerning summary prospectus eligibility and use, to permit non-United States issuers to use the Rule on the same basis as they are permitted to use Form S–3.

4. *Written Consents.* The proposed revisions to the rules, including paragraph (g) of the Rule 436, comprising this section of Regulation C have been adopted as proposed. Since the substance of Rule 435 has been transferred to Regulation S–K, the Commission has rescinded Rule 435.

5. *Competitive Bids.* This is a new section of Regulation C with contains the provisions that apply specifically to registration statements for securities to be offered at competitive bid. The previous heading of this section was "Exhibits," but that heading has been withdrawn, because the substance of the rules concerning exhibits has been transferred to Regulation S–K (Rules 445 and 446) and to Rule 411 (Rule 447). It is believed that a separate section for competitive bidding registration statements will make it easier for registrants and their counsel to comply with the requirements for such registration statements.

6. *Filings, Fees, Effective Date.* The proposed revisions to the rules comprising this section of Regulation C have been adopted substantially as proposed. Two technical changes have been made to Rule 457 to clarify the operation of that Rule. First, Rule 457 (e)(2) has been amended to include registrants with a negative book value but not in bankruptcy or receivership within the filing fee requirements of that paragraph. Second, Rule 457(k) has been revised to include all issuers of standardized options within the filing fee requirements of that paragraph.

Certain commentators objected to the treatment of insurance against liabilities arising under the Securities Act for investment companies and business development companies in proposed Rule 461(c). The Commission has determined to revise the Rule 461(c) on adoption to make clear that such insurance will not be considered a bar to acceleration of a registration statement if the cost of the insurance is borne by the insured officer or director of the registrant.

7. *Amendments, Withdrawals.* The proposed revisions to the rules comprising this section of Regulation C have been adopted substantially as revised. With respect to Rules 477 and 479, the Commission requested specific comment on the necessity of retaining the marking procedure for withdrawn or abandoned registration statements in light of the Commission's current system for retaining official documents on microfiche.[96] The commentators opined that a marking procedure was not necessary. The revised procedure provides that an order declaring a registration statement to be either withdrawn or abandoned will be placed under the same file number as the registration statement to which such order relates.

8. *Investment Companies, Business Development Companies.* This grouping of rules is a new section within Regulation C. It has been developed to bring together all of the special rules for investment companies and business development companies. The Commission emphasizes that this grouping does not mean that only these rules and not others in Regulation C apply to such companies. All rules within Regulation C are applicable to registration statements filed by investment companies and a note has been added to the Regulation to that effect. The proposed rules and the proposed revisions to existing rules have been adopted substantially as proposed.

9. *Registration by Foreign Governments.* The Commission did not propose revisions to the rules comprising this section of Regulation C nor did the commentators suggest any revisions. Hence, there have been no changes to these rules.

V. Liability Issues

A. Background

The Liability Release published for comment three proposals addressing certain issues of civil liability under the Commission's integrated disclosure program. Proposed Rule 176 would identify certain of the circumstances bearing upon the reasonableness of the investigation and the determination of what constitutes reasonable ground for belief under section 11(b) of the Securities Act.[97] Proposed Rule 412 would deem the effective date of documents incorporated by reference into a registration statement to be the document's initial filing date and proposed Rule 418 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 Securities Act.

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[94] With respect to research reports distributed by broker-dealers with continuing agreements with the registrant, the staff generally has taken the position that reports complying with Rule 139 under the Securities Act (17 CFR 230.139) do not constitute prohibited inducements to purchase under Rule 10b–6. 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. The interim no action position announced in the Rule 10b–6 Release with respect to Rule 415 shelf registrations would operate to allow those persons subject to Rule 10b–6 to distribute research reports beyond those complying with Rule 139 up until three business days prior to the commencement of sales. A similar position will be taken with respect to research reports for purposes of sections 2(1) and 5(c) of the Securities Act and Rule 139 thereunder. It also should be noted that Rule 139 will be the subject of the "sunset" review of the "100" rules under the Securities Act (17 CFR 230.100 to 230.175).

[95] Summary prospectuses prepared by independent organizations and filed by a registrant as part of its registration statement shall comply with the requirements of revised Rule 431.

[96] *See* the Regulation C Release, 46 FR at 41984.

[97] Section 11(b) of the Securities Act provides that each person, other than the issuer, will not be held liable, if he can sustain the burden of proof that his conduct, under the circumstances, was reasonable. Specifically, 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. 15 U.S.C. 77k(b)(3). Section 11(c) provides that "the standard of reasonableness shall be that required of a prudent man in the management of his own property." 15 U.S.C. 77k(c).

There were relatively few comments directed to proposed Rule 176. Although commentators generally supported adoption of the proposed Rule,[98] several commentators criticized the description in the Liability Release of several information-gathering techniques which could minimize the amount of time required for investigation immediately prior to the filing of a short form registration statement. The Commission, therefore, wishes to emphasize that the techniques identified were in no way intended to be mandatory, but rather were presented to help facilitate the development of procedures compatible with the integrated approach to registration. Underwriters and others may accept or reject any of the measures described in this part of the Liability Release. The important point is that each subject person should evaluate the surrounding facts, including the extent of his prior relationship with the registrant, and utilize techniques of investigation appropriate to the circumstances of the offering.

B. Implementing Rules

1. *Rule 176.* Proposed Rule 176 would codify section 1704(g) of the proposed Federal Securities Code (the "Code"),[99] which the Commission has endorsed with certain modifications.[100] While the Rule describes some circumstances which may affect the reasonableness of an inquiry, the Commission recognizes that there are other circumstances beyond those enumerated in the Rule which may bear upon the reasonableness of the conduct of persons subject to Section 11. Judicial interpretations of section 11 have confirmed the principle that what constitutes reasonable investigation and reasonable ground for belief depends upon the circumstances of each registration.[101] The prospect of continued flexible application of that standard by the courts should provide assurance to subject persons that they will not incur unreasonable investigative burdens.

Several commentators urged that the Commission restore the reference to the underwriter's access to information which appeared in clause (b) of section 1704(g) of the Code before it was modified and endorsed by the Commission in September 1980. The Commission objected to the Code's reference to access to information because the word "access" could imply that a registrant's refusal to grant the underwriter access to pertinent information would be a ligitimate ground for not investigating. There, however, will be occasions where information cannot be investigated fully because of its unavailability. For example, the information may be in the possession of a hostile subject company.[102] To take account of circumstances such as these, the Commission is inserting in paragraph (g) the phrase "the availability of information with respect to the registrant."

Accordingly, the Commission is adopting Rule 176 as proposed with the addition to paragraph (g) described above. The Commission staff will monitor the operation of Rule 176 and Section 11 suits involving short form registration statements in order to determine whether there is need for further action by the Commission or the Congress in view of the conduct of persons subject to Section 11 and the standards to which they are held by the courts.

2. *Proposed Rule 412.* A number of commentators, for a variety of reasons, opposed the adoption of proposed Rule 412. Among other things, it was noted that the Rule seemed unnecessary and could be confusing to subject persons. In light of these problems, the Commission is withdrawing proposed Rule 412.

3. *Proposed Rule 418.* The majority of the commentators supported proposed Rule 418 and the Rule is being adopted as proposed. In view of the withdrawal of proposed Rule 412, the final Rule, originally proposed as Rule 418, is being renumbered as Rule 412.

4. *Possible Amendment of Rule 461.* In the Liability Release, the Commission specifically solicited comment on whether there is any need to amend Rule 461 (Requests for acceleration of effective date of registration statements) 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. Most commentators opined that such a determination already is implicit in the underwriter's participation and that such a written statement could impair the underwriter's defense in litigation arising from the offering. Accordingly, the Commission is not amending Rule 461.

VI. Implementing and Coordinating Amendments

In order to facilitate implementation of the integrated disclosure program, the Commission reviewed Securities Act and Exchange Act rules, forms and schedules generally to determine whether any coordinating amendments in addition to those discussed above were necessary. Those amendments proposed together with the other August 1981 proposals are as follows.

A. Securities Act Rules 135 and 138 [103]

Rule 135 (17 CFR 230.135, Notice of certain proposed offerings) is being amended substantially as proposed in the Securities Act Coordinating Release, but now will permit dissemination of the information specified by the Rule not only with respect to exchange listed securities, but also with respect to securities quoted on the NASDAQ interdealer quotation system. Dissemination will be permitted through the facilities of the consolidated transaction reporting system and the NASDAQ system as well as through the facilities of the national exchanges and the Dow Jones broad tape. This change should assure more complete dissemination of information with respect to rights offerings of securities.

Rule 138 (17 CFR 230.138, Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications) is being amended as proposed in the Securities Act Coordinating Release. The changes will replace references to deleted forms.

B. Exchange Act Rules and Schedules

In the Exchange Act Coordinating Release, the Commission proposed to amend (1) Item 15 of Schedule 14A of Regulation 14A to require registrants to furnish management's discussion and analysis of financial condition and results of operations as required by Item 303 of Regulation S-K relating to proxy statements soliciting action with respect to certain authorizations or issuances of securities and the modification or

[98] It should be noted that three commentators urged the Commission to adopt, in lieu of proposed Rule 176, a safe harbor rule for underwriters with respect to documents incorporated by reference. In 1978, however, the Commission declined to adopt a proposed rule which would have provided underwriters a safe habor from liability under section 11 and section 12(2). Release No. 33-5998 (November 17, 1978) [43 FR 56054]. *See* the Liability Release for a more detailed discussion of these proposals.

[99] ALI, *Federal Securities Code* (1980).

[100] Release No. 33-6242, (September 18, 1980).

[101] For example, the Commission believes that a court would not expect the investigation undertaken in connection with a short form registration of a seasoned company to be the same as that which would be reasonable in connection with an initial public offering.

[102] *Feit* v. *Leasco Data Processing Equipment Co.*, 332 F. Supp. 544 at 584-85 (E.D.N.Y. 1971).

[103] Rules 135, 138 and 139 (discussed above in connection with the shelf rule) are among those rules which will be the subject of the "sunset" review of the "100" rules under the Securities Act which will be undertaken during the next year.

exchange of securities; (2) Rule 15c2–8 (17 CFR 240.15c2–8) regarding delivery of prospectuses to incorporate the "48-hour rule" of Release No. 33–4968; [104] and (3) Rules 13e–4 and 14d–6 (17 CFR 240.14d–6) regarding summary financial disclosure in tender offers. In addition, Appendix A of Schedule 14A was proposed to be deleted. No commentators objected to the proposals, although several changes were suggested. Accordingly, the Commissions adopting the amendments, with certain changes as discussed below, and is deleting Apendix A.[105] In addition, the Commission is making several technical changes in Regulation 14A to correct inadvertent omissions.

1. *Regulation 14A.* In addition to amending Item 15 of Schedule 14A and deleting Appendix A, the Commission is making three technical amendments to Regulation 14A. The first concerns Item 4 of Schedule 14A, which specifies information to be included in a proxy statement about certain persons who have an interest in any matter to be acted upon. It has come to light that the requirement in Item 4(b)(2) to describe, in connection with solicitations subject to Rule 14a–11 (17 CFR 240.14a–11), the interest of "any person named in answer to Item 6(b)" was inadvertently left unchanged when Item 6(b) was changed substantially in 1978.[106] Prior to 1978, Item 6(b) concerned certain persons who were a party to an arrangement or understanding pursuant to which a nominee was to be elected. Since the substance of Item 4(b)(2) was not intended to be changed when Item 6(b) was amended, the Commission is now amending Item 4(b)(2) to require information with respect to the persons formerly described in Item 6(b).

Second, the Commission has become aware that the Code of Federal Regulations does not correctly state the text of Item 20 of Schedule 14A, which specifies the disclosure required in a proxy statement if action is to be taken with respect to any amendment of the issuer's charter, bylaws or other documents. Accordingly, Item 20 is being amended to include the correct text.

Third, it also has come to light that the fee requirements applicable to the filing of proxy statements, ordinarily contained in Rule 14a–6, were inadvertently omitted from that rule when it was amended in coordination with the adoption of Form S–15.[107] Accordingly, the Commission is amending Rule 14a–6 to reinsert paragraph (i) setting forth the fee schedule. In coordination with this, existing paragraph (i) is being redesignated as paragraph (j).

2. *Rule 15c2–8.* The proposed amendment to Rule 15c2–8, which sets forth the specific steps participating brokers or dealers must follow reasonably to distribute the preliminary prospectus, required a broker-dealer to comply with the 48-hour rule in connection with 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 Item 501 of Regulation S–K. After further consideration, the Commission is amending Rule 15c2–8 to require compliance with the 48-hour rule only in the case of registrants not subject to the reporting requirements of section 13(a) or 15(d) and to provide that compliance is not required where a registrant is not required to file reports to section 13(a) or 15(d) because it has been exempted from those requirements pursuant to section 12(h) of the Exchange Act.

3. *Rules 13e–4 and 14d–6.* Rules 13e–4 and 14d–6 under the Exchange Act, regarding tender offer disclosure requirements, are revised to substitute the substantive summary financial information contained in paragraph (e) of Guide 59 for the references to Guide 59 previously contained in the Rules. As explained in the Exchange Act Coordinating Release, the substitutions are necessary in view of the Commission's decision to rescind Guide 59. They are intended to ensure that Rules 13e–4 and 14d–6 will continue to provide guidance as to what is sufficient to constitute a fair and adequate summary of financial information for purposes of the disclosure requirements therein.

C. Safe Harbor Rules for Projections

The Commission is amending the safe harbor rules for projections under the Exchange Act (Rule 3b–6, 17 CFR 240.3b–6), Securities Act (Rule 175, 17 CFR 230.175), and related federal securities laws [108] in order to clarify and broaden the scope of the safe harbor protection provided thereunder. The amendments make clear the Rules' original intent that safe harbor protection extend to projections made in a quarterly report on Form 10–Q, a registration statement on Form 10 or an annual report to security holders furnished to the Commission, even though the registrant has not yet been required to file an annual report on Form 10–K, as well as to the registrant's first filing on Form 10–K.

Statutory Authority and Findings

The Commission hereby adopts the rulemaking actions set forth below pursuant to the following statutory authority. The actions revising 17 CFR Parts 230 and 239 are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The actions revising 17 CFR Parts 240 and 249 are adopted pursuant to the authority in sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934. The action revising 17 CFR Part 250 is adopted pursuant to the authority in section 20(a) of the Public Utility Holding Company Act of 1935. The action revising 17 CFR Part 260 is adopted pursuant to the authority in section 319(a) of the Trust Indenture Act of 1939. The action revising 17 CFR Part 274 is adopted pursuant to the authority in section 38(a) of the Investment Company Act of 1940. The action revising 17 CFR Parts 200, 201 and 229 are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act; sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Exchange Act; section 20(a) of the Public Utility Holding Company Act; section 319(a) of the Trust Indenture Act; and section 38(a) of the Investment Company Act.

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the rulemaking actions revising 17 CFR Parts 200, 201, 229, 240 and 249, taken pursuant to the various provisions of the Exchange Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Pursuant to section 553(d) of the Administrative Procedure Act of 1949 (5 U.S.C. 553), the Commission finds for good cause that Rule 415 shall become effective immediately upon publication in the **Federal Register** (March 16, 1982).

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[104] (April 24, 1969) [34 FR 7235]. The 48-hour rule requires a broker-dealer to 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.

[105] As noted in the discussion above of Rule 405 of Regulation C, the adoption of a definition of the term "executive officer" in Rule 3b–7 necessitated deleting definitions of that term previously found in various Exchange Act rules and schedules

[106] Release No. 34–15384 (December 6, 1978) [43 FR 58522].

[107] Securities Act Release No. 33–6332 (September 2, 1981) [45 FR 63647].

[108] Specifically, Rule 103A (17 CFR 250.103A) under the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a et seq., and Rule 0–11 under the Trust Indenture Act of 1939, 15 U.S.C. 77aaa–77bbbb.

in view of the temporary basis on which it is adopted, and that it and the other rulemaking actions adopted herein may be used and relied upon prior to their effective dates by any persons desiring to do so.

Availability of Final Regulatory Flexibility Analysis With Regard to Forms S–1, S–2 and S–3

In accordance with 5 U.S.C. 604, the Commission has prepared a final Regulatory Flexibility Analysis with regard to Forms S–1, S–2 and S–3. The corresponding Initial Regulatory Flexibility Analysis was included in the S–1–2–3 Release at 46 FR 41923. Members of the public who wish to obtain copies of the Final Regulatory Flexibility Analysis of Forms S–1, S–2 and S–3 should contact William L. Larsen, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202–272–2604).

Text of Forms, Regulations and Rules

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising paragraphs (a)(3), the first phrase, and (4) of § 200.30–1 to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act;

* * *

(4) To accelerate the use or publication of any summary prospectus filed with the Commission pursuant to section 10(b) of the Act (15 U.S.C. 77j(b)) and Rule 431(g) (§ 230.431(g) of this chapter) thereunder.

* * * * *

2. By revising the introductory text of paragraph (b–2) of § 200.30–5 to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b–2) With respect to post-effective amendments filed pursuant to paragraph (a) of Rule 485 (§ 230.485 of this chapter) under the Act.

* * * * *

3. By revising paragraph (a)(3) of § 200.30–6 to read as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(a) * * *

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act.

* * * * *

4. By removing existing Forms S–1, S–2, S–7, and S–16 and by removing the proposed designation of Forms S–1, S–2 and S–3 in paragraph (b) of § 200.800 to read as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
* * * *	*		
Form S–1	§239.11	3235–0065	June 30, 1982
Form S–2	§239.12	3235–0072	June 30, 1982
Form S–3	§239.13	3235–0073	June 30, 1982
* * * *	*		

PART 201—RULES OF PRACTICE

5. 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).

6. By revising in paragraph (a) the first sentence in its entirety and the second sentence up to the first comma, and in (b)(1) the first sentence up to the fourth comma, of § 201.25 to read as follows:

§ 201.25 Confidential treatment of certain matters.

(a) *Requests for confidential treatment.* Confidential treatment of material listed in § 201.25(a) may be requested for good cause where authorized by statute. Request for confidential treatment may be made pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933 and § 230.406 of this chapter thereunder.* * *

(b) *Procedure in confidential treatment cases.* (1) All papers containing data as to which confidential treatment is sought, together with any application making objection to the disclosure thereof, or other papers relating in any way to such application, shall be made available to the public only in accordance with orders of the Commission and/or the applicable provisions of §§ 230.406.* * *

* * * * *

7. By revising 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

Subpart 229.1—General.

Sec.

229.10 General.

Subpart 229.100—Business.

229.101 (Item 101) Description of business.

229.102 (Item 102) Description of property.

229.103 (Item 103) Legal proceedings.

Subpart 229.200—Securities of the Registrant.

229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.
229.202 (Item 202) Description of registrant's securities.

Subpart 229.300—Financial Information.

229.301 (Item 301) Selected financial data.
229.302 (Item 302) Supplementary financial information.
229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.
229.304 (Item 304) Disagreements with accountants on accounting and financial disclosure.

Subpart 229.400—Management and Certain Security Holders.

229.401 (Item 401) Directors and executive officers.
229.402 (Item 402) Management remuneration and transactions.
229.403 (Item 403) Security ownership of certain beneficial owners and management.

Subpart 229.500—Registration Statement and Prospectus Provisions.

229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.
229.502 (Item 502) Inside front and outside back cover pages of prospectus.
229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.
229.504 (Item 504) Use of proceeds.
229.505 (Item 505) Determination of offering price.
229.506 (Item 506) Dilution.
229.507 (Item 507) Selling security holders.
229.508 (Item 508) Plan of distribution.
229.509 (Item 509) Interests of named experts and counsel.
229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.
229.511 (Item 511) Other expenses of issuance and distribution.
229.512 (Item 512) Undertakings.

Subpart 229.600—Exhibits.

229.601 (Item 601) Exhibits.

Subpart 229.700—Miscellaneous.

229.701 (Item 701) Percent sales of unregistered securities.
229.702 (Item 702) Indemnification of directors and officers.

Subpart 229.800—List of Industry Guides.

229.801 Securities Act industry guides.
229.802 Exchange Act industry guides.

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 55f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a).

Subpart 229.1—General

§ 229.10 General.

(a) *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.

(b) *Commission policy on projections.* The Commission encourages the use in documents specified in Rule 175 under the Securities Act (§ 230.175 of this chapter) and Rule 3b–6 under the Exchange Act (§ 240.3b–6 of this chapter) 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 must 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 covered 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 assumptions 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-sensitive 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.

(c) *Commission policy on security ratings.* In view of the importance of security ratings ("ratings") to investors and the marketplace, the Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. In addition, the Commission permits, pursuant to Rule 134(a)(14) under the Securities Act (§ 230.134(a)(14) of this chapter), voluntary disclosure of ratings assigned by any nationally recognized statistical rating organizations ("NRSROs") in certain communications deemed not to be a prospectus ("tombstone advertisements"). Set forth herein are the Commission's views on important matters to be considered in disclosing security ratings.

(1) *Securities Act filings.* (i) If a registrant includes in a registration statement filed under the Securities Act any rating(s) assigned to a class of securities, it should consider including: (A) Any other rating intended for public dissemination assigned to such class by a NRSRO ("additional NRSRO rating") that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; and (B) the name of each rating organization whose rating is disclosed; each such rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating. The registrant also should include the written consent of any rating organization that is not a NRSRO whose rating is included. With respect to the written consent of any NRSRO whose rating is included, see Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter).

(ii) If a change in a rating already included is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant should consider including such rating change in the final prospectus. If the rating change is material or if a materially different rating from any disclosed becomes available during this period, the registrant should consider amending the registration statement to include the rating change or additional rating and recirculating the preliminary prospectus.

(iii) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the registrant should consider disclosing such additional rating or rating change by means of post-effective amendment or sticker to the prospectus pursuant to Rule 424(c) under the Securities Act (§ 230.424(c) of this chapter), unless, in the case of a registration statement on Form S–3 (§ 239.13 of this chapter), it has been disclosed in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to the termination of the offering.

(2) *Exchange Act filings.* (i) If a registrant includes in a registration statement or periodic report filed under the Exchange Act any rating(s) assigned to a class of securities, it should consider including the information specified in paragraphs (c)(1)(i)(A) and (B) of this section.

(ii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a registrant subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act, the registrant should consider filing a report on Form 8–K (§ 249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating change.

Subpart 229.100—Business

§ 229.101 (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 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange 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 paragraph (b) complies with generally accepted 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 restated retroactively 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 restated retroactively; 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 segment information being reported; restatement is not required when a registrant's reportable segments change solely 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 includes, or is required by Article 3 of Regulation S–X [17 CFR 210] to include, interim financial statements, 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 availability of raw materials.

(iv) The importance to the industry segment and the duration and effect of all patents, trademarks, 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 and the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole. 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), operating profit or loss 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.) To the extent that financial information included pursuant to this paragraph (d) complies with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative data in its financial statements; conversely a registrant may cross-reference to the financial statements. 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 includes, or is required by Article 3 of Regulation S–X [17 CFR 210], to include, interim financial statements, 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, pursuant to paragraph (c) of this Item, 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.

§ 229.102 (Item 102) Description of property.

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 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 (§ 229.101).

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. See Rule 418 of Regulation C (§ 230.418 of this chapter) and Rule 12b–4 of Regulation 12B (§ 240.12b–4 of this chapter) with respect to the submission to, and return by, the Commission of supplemental information.

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 such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge or consolidate with the registrant or otherwise to acquire the registrant's securities, such estimates may be included in documents relating to such acquisition.

6. The definitions in § 210.4–10(a) of Regulation S–X [17 CFR 210] shall apply to this Item with respect to oil and gas operations.

§ 229.103 (Item 103) Legal proceedings.

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 legal and factual 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 A and B 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 primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

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; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Subpart 229.200—Securities of the Registrant

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

(a) *Market information.* (1)(i) Identify the principal United States market or markets in which each class of the registrant's common equity is being traded. Where there is no established public trading market for a class of 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 each class of 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 included, or are required to be included 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 included, or are required to be included 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, as applicable, 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 the extent practicable, 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) If the information called for by this paragraph (a) is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity (i) that is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant; (ii) that could be sold pursuant to Rule 144 under the Securities Act (§ 230.144 of this chapter) or that the registrant has agreed to register under the Securities Act for sale by security holders; or (iii) that 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.

(b) *Holders.* (1) Set forth the approximate number of holders of each class 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 owned beneficially by (i) 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 common equity and (ii) each director and nominee and (iii) all directors and officers as a group, and the registrant's present commitments to such persons with respect to the issuance of shares of any class of its common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on each class of its 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. Where there are 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 so state and either (i) describe briefly (where appropriate quantify) such restrictions, or (ii) cross reference to the specific discussion of such restrictions in the Management's Discussion and Analysis of financial condition and operating results prescribed by Item 303 of Regulation S–K (§ 229.303) and the description of such restrictions required

by Regulation S–X in the registrant's financial statements.

(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 listed for trading 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 exchange 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. 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.

§ 229.202 (Item 202) Description of registrant's securities.

Note.—If the securities being described 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, in the case of an underwritten offering, 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, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) 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; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(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 authorized 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 or cross-reference to a description in another part of the document, any provision of the registrant's charter or by-laws that would have an effect of delaying, deferring or preventing a change in control of the registrant and that would operate only with respect to an extraordinary corporate transaction involving the registrant (or any of its subsidiaries), such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. 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 preceding 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 securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; 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 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 authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities; to the extent not otherwise disclosed pursuant to this Item; 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 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;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) 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 securities 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 Regulation S–K (§ 229.201 of this chapter)) provide market information with respect to such securities comparable to that required by paragraph (a) of Item 201 of Regulation S–K (§ 229.201).

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, 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 or redeemable, a statement to that effect;

B. In the case of 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 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, if 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 (to the extent not disclosed in the document pursuant to Item 201 of Regulation S–K (§ 229.201) or otherwise) 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 being registered;

C. A brief outline of all taxes, including withholding provisions, to which United States security holders 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 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 expiration or termination date of the warrants;

C. 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 discretion of the registrant, the registrant should describe such provision); and

D. 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.

Subpart 229.300—Financial Information

§ 229.301 (Item 301) Selected financial data.

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]; 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.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the registrant's future financial condition or results of operations.

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.

5. If interim period financial statements are included, or are required to be included, 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 not necessary to an understanding of such updating information.

§ 229.302 (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 included or are required to be included 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 (§ 249.308a of this chapter) 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 included or are required to be included 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, as 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 (except a foreign private registrant not required to report quarterly financial information on Form 10-Q) 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 holders of record, as defined in Rule 12g5-1 (§ 240.12g5-1 of this chapter), 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 registrant 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 under the Exchange Act (§ 240.11Ac1-2 of this chapter) 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 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. Registered investment companies are excluded from these standards by Statement of Financial Accounting Standard No. 54 "Financial Reporting and Changing Prices: Investment Companies."

§ 229.303 (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 (§ 229.301) 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 shall 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 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 parent company 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 included or are required to be included by Article 3 of Regulation S–X [17 CFR 210], 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 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).

§ 229.304 (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 matter 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.

Subpart 229.400—Management and Certain Security Holders

§ 229.401 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 (§ 240.14a–4(d) of this chapter).

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 (§ 240.14a–101 of this chapter) by those registrants relying on general instruction G of Form 10–K under the Exchange Act (§ 249.310 of this chapter). *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) (§§ 240.14a–6 and 240.14c–5 of this chapter), 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.

§ 229.402 (Item 402) Management remuneration and transactions.

(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.*

Remuneration 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 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 documents 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 earning performance or market values, such remuneration is subject to future events under this standard. However, if dependence on future events does 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 retirement 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 tandem with options granted during the specified 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 number of rights outstanding at the end of the specified period;

(iv) 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;

(v) The number of rights outstanding as of the end of the specified period; and

(vi) 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 shall 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 an 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, 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.

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 $50,600; 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 (§ 239.18 of this chapter), 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 from 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 (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter), 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 (§ 240.14a–101 of this chapter) 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 —:				
Number of shares [2]				
Outstanding at —:				
Number of options without tandem rights				
Number of options with 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	$	$	$	$
Exercised or realized — to —:				
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.

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(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 (§ 240.13d–3(d)(1) of this chapter).

(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

(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)].

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d–3 under the Exchange Act (§ 240.13d–3 of this chapter). 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.

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.

Subpart 229.500—Registration Statement and Prospectus Provisions

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

(a) *Facing page.* The facing page of every registration statement shall set forth the approximate date of proposed sale to the public and, where appropriate, the delaying amendment legend as set forth in Regulation C.

(b) *Cross-reference sheet.* 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.

(c) *Outside front cover page of 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:

(1) 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 registrant 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;

(2) 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);

(3) Where any of the securities to be registered are to be offered for the account of security holders, a statement to that effect;

(4) Cross reference, where applicable to the discussion in the prospectus prescribed by Item 503 of Regulation S–K (§ 229.503), 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, add ".";

(5) 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;

(6) 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;

(7) Where securities are to be offered for cash, other than on a registration statement on Form S–8 (§ 239.16b of this chapter), the information called for by the following table, in substantially the tabular form indicated, as to all securities to be registered (estimated, if necessary):

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit			
Total			

(8) 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.

(9) Any legend or information required by the law of any State in which the securities are to be offered; and

(10) 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 latest 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 may be described in response to Item 508 of Regulation S–K (§ 229.508) rather than on the cover page of the prospectus.

5. The total of "other expenses of issuance and distribution" called for by Item 511 of Regulation S–K (§ 229.511), stated separately for the registrant and for the selling security holders, if any, shall be set forth in a note to the proceeds column of the distribution table.

§ 229.502 (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 §§ 200.11(b) and 200.80(c)(1) of this chapter), 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 may 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 in such event, 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 address (including title or department) and telephone number to which 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 (§ 230.174 of this chapter) 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 (§ 230.424(b) of this chapter). 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:

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.

(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; in United States courts, judgments against such persons judgments obtained in such 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.

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

(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 equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

(d) *Ratio of earnings to fixed charges.* The ratio of earnings to fixed charges or the ratio of earnings to combined fixed charges and preferred stock dividends (the "ratio") should be disclosed pursuant to the following rules and definitions:

(1)(i) Furnish in registration statements filed under the Securities Act of 1933 (A) the ratio of earnings to fixed charges if debt securities are being registered; or (B) the ratio of earnings to combined fixed charges and preferred stock dividends if preferred stock is being registered. Disclosure of both ratios is permitted in registration statements relating to debt or preferred stock and either ratio or both ratios may be disclosed in other filings.

(ii) The ratio shall be disclosed for the following periods:

(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) The latest interim period for which financial statements are presented.

(2) The ratio shall be computed using the amounts for the enterprise as a whole including (i) the registrant, (ii) its majority-owned subsidiaries, whether or not consolidated, (iii) its proportionate share of any fifty-percent-owned

persons, and (iv) any income received (but not undistributed amounts) from less-than-fifty-percent-owned persons.

(3) The term "earnings" shall be defined as pretax income from continuing operations with the following adjustments:

(i) Add to the pretax income the amount of fixed charges computed pursuant to paragraph (d)(4) of this section, except that interest capitalized during the period shall be excluded from the fixed charge amount.

(ii) Only the registrant's share in the income of majority-owned subsidiaries and the distributed income of less-than-fifty-percent-owned persons shall be included in earnings, except that a registrant may include the minority interest in the income of majority-owned subsidiaries that have fixed charges.

(iii) The full amount of losses of majority-owned subsidiaries shall be considered in the computation of earnings.

(iv) Where an investment in a less-than-fifty-percent-owned person accounted for under the equity method results in the recognition of a loss, such loss shall not be considered in the computation of the ratio except where the registrant has guaranteed or otherwise undertaken, directly or indirectly to service the debt of such person. In the latter case, the registrant's equity in the loss shall be included in earnings and the fixed charges shall include the interest expense related to the guaranteed debt.

(v) Registrants other than public utilities may add to earnings the amount of previously capitalized interest amortized during the period. In the case of a registrant which is a rate-regulated public utility, interest charges shall not be reduced by any allowance for funds used during construction. The "borrowed-funds" component of any such allowance shall be included in earnings.

(4)(i) The term "fixed charges" shall mean the total of (A) interest, whether expensed or capitalized; (B) amortization of debt expense and discount or premium relating to any indebtedness, whether expensed or capitalized; (C) such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case; and (D) preferred stock dividend requirements of majority-owned subsidiaries, excluding in all cases items which would be or are eliminated in consolidation.

(ii) If the registrant is a guarantor of debt of an unaffiliated person (such as a supplier), the amount of fixed charges associated with such debt should not be included in the computation of the ratio unless the registrant has been required to satisfy the guarantee or it 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 existence of any such guarantee and the amount of the associated fixed charges and state whether or not such amount is included in the computation of the ratio.

(5) The term "preferred stock" shall include all types of preferred and preference stocks.

(6) For purposes of paragraph (4)(i)(D) above and computation of the combined ratio, the preferred stock dividend requirements shall be increased to an amount representing the pre-tax earnings which would be required to cover such dividend requirements. Therefore, the increased amount =

$$\frac{\text{Preferred Stock Dividend Requirements}}{100\%-\text{Income Tax Rate}}$$

The tax rate shall be based on the relationship of the provision for income tax expense applicable to income from continuing operations to the amount of pre-tax income from continuing operations.

(7) If either ratio computation indicates a less than one-to-one coverage, state that earnings are inadequate to cover fixed charges and disclose the dollar amount of the coverage deficiency.

(8) If the level of the registrant's ratio is maintained by its parent, for example, in order to meet the minimum borrowing standards of agencies of various states, or if the registrant's parent is guaranteeing the registrant's debt securities or preferred stock, the parent's ratio as well as the registrant's ratio shall be disclosed.

(9) A pro forma ratio shall be presented in the prospectus of any registration statement filed to register debt or preferred stock to be used in a refinancing if the effect of the refinancing changes the historical ratio by ten percent or more.

(i) A "refinancing" is defined as the extinguishment of one or more specific issues of dept with the proceeds from the sale of additional debt, or the extinguishment of one or more specific issues of preferred stock with the proceeds from the sale of additional preferred stock.

(ii) The only adjustments which shall be made to the corresponding historical ratio are to give effect to the net increase or decrease in interest expense or preferred stock dividends resulting from (A) the proposed issuance of new debt or preferred stock and (B) the corresponding retirement of any debt or preferred stock presently outstanding (but only for the period of time outstanding) which will be retired with the proceeds from the proposed offering. If only a portion of the proceeds will be used to retire presently outstanding debt or preferred stock, only a related portion of the interest or preferred dividend should be used in the pro forma adjustment.

(iii) The pro forma ratio, if applicable, shall be presented for only the most recent fiscal year and the latest interim period or, at the option of the registrant, the most recent twelve months.

§ 229.504 (Item 504) Use of proceeds.

1State 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 (§ 229.501).

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 needed for each such specified purpose and the sources thereof.

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. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S–X to be included, in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S–X (17 CFR 210) would require financial statements of the business to be acquired to be included, 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.

§ 229.505 (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 (§ 229.201(a)) 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 (§ 229.201(a)) are being registered, describe the various factors considered in determining their exercise or conversion price.

§ 229.506 (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 by a registrant that has had losses in each of its last three fiscal years 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.

§ 229.507 (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.

§ 229.508 (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 being registered are those 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 (§ 229.501), 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 first 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 distributions.* 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 or 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 (§ 229.504).

(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.

(e) *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.* Describe any arrangement whereby the underwriter has the right to designate or nominate a member or members of the board of directors of the registrant. The registrant shall disclose the identity of any director so designated or nominated, and indicate whether or not a person so designated or nominated, or allowed to be designated or nominated 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.* Identify any finder and, if applicable, describe the nature of any material relationship between such finder 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).

(j) *Discretionary accounts.* If the registrant was not, immediately prior to the filing of the registration statement, subject to the requirements of section 13(a) or 15(d) of the Exchange Act, identify any principal underwriter that intends to sell to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be sold. The response to this paragraph shall be contained in a pre-effective amendment which shall be circulated if the information is not available when the registration statement is filed.

§ 229.509 (Item 509) Interests 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, through the date of effectiveness of the registration statement or that part of the registration statement to which such preparation, certification or opinion relates, 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 attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, 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.

§ 229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

In addition to the disclosure prescribed by Item 702 of Regulation S–K (§ 229.702), if the undertaking required by paragraph (i) of Item 512 of Regulation S–K (§ 229.512) is not required to be included in the registration statement because acceleration of the effective date of the registration statement is not being 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.

§ 229.511 (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 securities 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 securities. 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.

§ 229.512 (Item 512) Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 415 Offering.*[1] Include the following if the securities are registered pursuant to Rule 415 under the Securities Act (§ 230.415 of this chapter):

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 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;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S–3 (§ 239.13 of this chapter) Form S–8 (§ 239.16b of this chapter), 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.

Instruction. 1. For purposes of paragraph (a)(1)(iii), a post-effective amendment need not be filed to disclose the addition or deletion of a managing underwriter as a co-manager unless there no longer remains at least one managing underwriter who was named in the registration statement or a post-effective amendment thereto.

2. If only one underwriter is involved in an offering, that entity would be deemed to be the managing underwriter for purposes of this undertaking. If two or more underwriters perform substantially the functions described in Rule 405 (§ 230.405 of this chapter), each would be deemed to be a managing underwriter for the purposes of this undertaking and the relationship of one underwriter to another would be that of a co-manager.

(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.

(b) *Filings incorporating subsequent Exchange Act documents 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 an 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 initial 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 registrant 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 registrant hereby undertakes (1) 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, and (2) 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.

(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 (§ 249.310 of this chapter) 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) §§ 240.14a–3 and 240.14c–3 of this chapter):

The undersigned registrant 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 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

[1] Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).

statement is on a Form S–8 (§ 239.16b of this chapter):

(1) The undersigned registrant 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 registrant'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 registrant 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 registrant has ended within 120 days prior to the use of the prospectus, the annual report of the registrant 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 registrant 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 registrant, 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 registrant 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 (§ 249.311 of this chapter)). 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 registrant'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 registrant'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 registrants.* 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 (§§ 239.23 or 239.29 of this chapter) in connection with a transaction specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

(1) The undersigned registrant 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 registrant 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 415 (§ 230.415 of this chapter), 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 (§ 230.461 of this chapter), 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 a provision whereby the registrant indemnifies the underwriter or controlling persons of the underwriter against such liabilities 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.

Subpart 229.600—Exhibits

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b–32 (§ 240.12b–32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required by 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 exhibits 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 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. 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 filed previously with another document, *Provided, However,* that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the 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	X			X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	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			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			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 interim financial information	X	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		X[3]	X[3]	X.[3]
(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	X				
(27) Invitations for competitive bids	X	X	X								
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X.

[1] Where incorporated by reference into the text of the prospectus as permitted by the registration statement.
[2] Where incorporated by reference into a previously filed Securities Act registration statement.

(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. Such agreement may be filed as an exhibit to a report on Form 8-K (§ 249.308 of this chapter) which is incorporated by reference into a registration statement subsequent to its effectiveness.

(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 including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant.

(ii) Except as set forth in (iii) below, for filings on Forms S–1, S–11, and S–14 under the Securities Act (§§ 239.11, 239.18 and 239.23 of this chapter) and Forms 10 and 10–K under the Exchange Act (§§ 249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

(iii) Where the instrument defines the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which 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, in the text of the Form 10–Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness 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).

Instruction. There need not be filed any instrument which defines the rights of participants (not as security holders) pursuant to an employee benefit plan.

(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 either:

(A) An opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code; or

(iii) If the securities being registered are issued under a plan which is subject to the requirements of ERISA and the plan has been amended subsequent to the filing of (ii) (A) or (B) above, furnish either:

(A) An opinion of counsel which confirms compliance of the amended provisions of the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the amended plan is qualified under section 401 of the Internal Revenue Code.

(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, or specifically refer to, 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, or specifically refer to, 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 Securities Act Industry Guide 5 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 significance:

(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 (§ 229.402).

(*6*) Any remunerative plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10–K or registering debt instruments or preferred stock which are not voting securities 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 any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios which appear in the registration statement or report. See Item 503(d) of Regulation S–K (§ 229.503(d)).

(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) (§ 230.411(b) of this chapter).

(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) under the Securities Act (§ 230.436(c) of this chapter) 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. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10–Q which is incorporated by reference into the registration statement.

(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*—(i) Any unfiled document, which was executed or in effect during the reporting period, shall be filed if such document would have been required to be filed as

an exhibit to a registration statement on Form 10.

(ii) Any amendment or modification to a document which was previously filed with the Commission as an exhibit to Form 10, 10–K or 10–Q. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

(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 may be incorporated by reference from a document which includes a complete and accurate list.

(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 4 of Part I of 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 12b–23(a)(3) under the Exchange Act (§ 240.12b–23(a)(3) of this chapter).

(24) *Consents of experts and counsel*—(i) Securities Act filings—All written consents required to be filed shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion or elsewhere in the registration statement or document filed therewith, a reference shall be made in the index to the report, the part of the registration statement or document or opinion, containing the consent.

(ii) Exchange Act reports—where the filing of a written consent is required with respect to material incorporated by reference in a previously filed registration statement under the Securities Act, such consent may be filed as exhibit to the material incorporated by reference. Such consents shall be dated and manually signed.

(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 where the power of attorney is contained elsewhere in the registration statement or documents filed therewith a reference shall be made in the index to the part of the registration statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(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. Such statement of eligibility shall be bound separately from the other exhibits.

(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.

§ 229.701 (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.

§ 229.702 (Item 702) Indemnification of directors and officers.

State the general effect of any statute, charter provisions, by-laws, contract or other arrangements under which any controlling persons, director or officer of the registrant is insured or indemnified in any manner against liability which he may incur in his capacity as such.

Subpart 229.800—List of Industry Guides

§ 229.801 Securities Act industry guides.

(a) Guide 1. Disclosure of principal sources of electric and gas revenues.

(b) Guide 2. Disclosure of oil and gas operations.

(c) Guide 3. Statistical disclosure by bank holding companies.

(d) Guide 4. Prospectuses relating to interests in oil and gas programs.

(e) Guide 5. Preparation of registration statements relating to interests in real estate limited partnerships.

§ 229.802 Exchange Act industry guides.

(a) Guide 1. Disclosure of principal sources of electric and gas revenues.

(b) Guide 2. Disclosure of oil and gas operations.

(c) Guide 3. Statistical disclosure by bank holding companies.

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

8. 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)(F) under the Securities Exchange Act of 1934 (17 CFR 240.14c3–1(c)(2)(vi)(F)).

* * * * *

9. 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 or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a registration statement on file with the Commission.

10. 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 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.

(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.

11. 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, and

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (§ 229.302 of this chapter), 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

* * * * *

12. By adding § 230.176 to read as follow:

§ 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, the role of the particular person as an underwritter and the availability of information with respect to the registrant; 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.

13. By removing §§ 230.406, 230.407, 230.412, 230.422, 230.425, 230.425a, 230.426, 230.430, 230.431, 230.432, 230.434, 230.434c, 230.435, 230.445, 230.446, 230.447 and 230.462.

14. By redesignating § 230.485 as § 230.406, §230.433 as § 230.430, §230.434a as 230.431, §230.434b as §230.432, §230.415 as §230.445, §230.428 as § 230.446, §230.471(b) as § 230.447, §230.434d as §230.482, and §230.465 as §230.485.

15. By amending Regulation C (§§ 230.400–230.494) by revising §§ 230.400–230.406, 230.411, 230.413–230.414, 230.421, 230.423, 230.427, 230.430–230.432, 230.436, 230.439, 230.445–230.446, 230.455, 230.457, 230.460–230.461, 230.464, 230.470–230.473, 230.477, 230.479, 230.482 and 230.485; and by adding §§ 230.412, 230.415, 230.418, and 230.280–230.494 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 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, or other amendment to such 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 or other amendment 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.

§ 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 ten copies of such documents. No other exhibits are required to accompany such additional copies.

§ 230.403 Requirements as to paper, printing, language and pagination.

(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 designated so as to be clearly distinguishable as such on photocopies.

(c) The registration statement proper shall be in the English language. If any exhibit or other paper or document filed as part of the registration statement is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

(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 the 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 (§ 230.411).

§ 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:

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.

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.

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.

Business development company. The term "business development company" refers to a company which has elected to be regulated as a business development company under sections 55 through 65 of the Investment Company Act of 1940.

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.

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.

Common equity. The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

Commission. The term "Commission" means the Securities and Exchange Commission.

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.

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.

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.

Employee. The term "employee" does not include a director, trustee, or officer.

Employee benefit plan. The term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive add "," pension or similar plan solely for employees, directors, trustees or officers.

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.

Executive officer. The term "executive officer," when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function 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.

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.

Foreign government. The term "foreign government" means the government of any foreign country or of any political subdivision of a foreign country.

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.

Foreign private issuer. The term "foreign private issuer" means any foreign issuer other than a foreign government.

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.

Managing underwriter. The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

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.

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.

Officer. The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

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

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.

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.

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; or

(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 (1) of this definition 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.

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.

Registrant. The term "registrant" means the issuer of the securities for which the registration statement is filed.

Share. The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions.

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether the past or future acquisition of another company in a business combination accounted for as a pooling of interests is significant for purposes of applying § 210.3–08 or reporting on Form 8–K, this condition is also met when the number of common shares exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five

fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(*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.")

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.

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.

Voting securities. The term "voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

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 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 to other government agencies. (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 or 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 Rule 477 (§ 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 therof.

§ 230.407 [Reserved]

§230.411 Incorporation by reference.

(a) *Prospectus.* Except as provided by this section or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Information not required in a prospectus.* Except for exhibits covered by Paragraph (c) of this section, 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 (§ 201.24 of this chapter), then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) *Exhibits.* 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, be incorporated by reference as an exhibit to any registration statement. 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 such modification and the date thereof.

(d) *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 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 or confusing.

§ 230.412 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.

§ 230.413 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, or if any issuer has been succeeded by an issuer for the purpose of changing its form of organization, 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 Company 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 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 an at the market offering of equity securities by or on behalf of the registrant: (i) The registrant must meet the registrant requirements and the applicable transaction requirements of Form S–3 (17 CFR 239.13); (ii) where voting stock is registered, the amount of securities registered for such purposes must not exceed 10% of the aggregate market value of the registrant's outstanding voting stock held by non-affiliates of the registrant (calculated as of a date within 60 days prior to the date of filing); (iii) the securities must be sold through an

underwriter or underwriters, acting as principal(s) or as agent(s) for the registrant; and (iv) 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 or through 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.

(c) This section shall be effective until December 10, 1982.

§ 230.418 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 (§ 230.405), in connection with the proposed offering;

(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 or Form S–3 (§§ 239.12 or 239.13 of this chapter), 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 (§ 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 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 more than 10 percent of the securities outstanding, 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;

(5) 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;

(6) 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

(7) 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 (§ 240.15c2–8 of this chapter).

(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 Prospectuses

§ 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 [Reserved]

§ 230.423 Date of prospectuses.

Except for a form of preliminary prospectus used after the effective date of the registration statement and prior to the opening of bids as permitted by Rule 445(c) (§ 230.445(c)), each prospectus used after the effective date of the registration statement shall be dated approximately as of such effective date; provided, however, that a revised or amended prospectus used thereafter need only bear the approximate date of its issuance. Each supplement to a prospectus shall be dated separately the approximate date of its issuance.

§ 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 [Reserved]

§ 230.430 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.

§ 230.431 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)(i) 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; or

(ii) If the registrant is a foreign private issuer, such registrant files the same reports with the Commission under section 13(a) or 15(d) of the Securities Exchange Act of 1934 as a domestic registrant pursuant to paragraph (a)(3) of this section;

(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) under the Securities Exchange Act of 1934 (§ 240.12b–25 of this chapter) 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) (§ 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 statement required by paragraph (e) of this section, 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) 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 as a part of the registration statement, 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.

§ 230.432 Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities which is subject to section 14(d) of the Securities Exchange Act of 1934 shall include all of the information, not otherwise required to be included therein, required by Rule 14d–6(c)(1)(§ 240.14d–6(c)(1) of this chapter) to be included in all such tender offers, requests or invitations, published or sent or given to the holders of such securities.

Written Consents

§ 230.435 [Reserved]

§ 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 than 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 paragraphs (a) and (b) of this section, the security rating 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 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)(F) [17 CFR 240.15c3–1(c)(2)(vi)(F)].

§ 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.

Competitive Bids.

§ 230.445 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 section.

(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 materials, 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 competitive 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.

§ 230.446 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.

§ 230.447 Authorization of agent for service for filing amendments.

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.

Filings; Fees; Effective Date

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements on Form S–18 (§ 239.28 of this Chapter) and except as otherwise provided in Rule 445 (§ 230.445). Registration statements on Form S–18 may be filed with the Commission either at its principal office or at the Commission's regional offices as specified in General Instruction B to Form S–18. Such material may be filed by delivery to the Commission through the mails or otherwise.

§ 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 amount 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, a merger, a consolidation, or a 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, or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash 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 (§ 239.19 of this chapter) 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 an exchange and registered by such exchange or a facility thereof or which is traded over the counter 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 430 (§ 230.430) 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)(1) of Regulation S–K (§ 229.512(d)(2) of this chapter) 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 (§ 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 under the Securities Exchange Act of 1934 (§ 240.15c3–1 of this chapter). 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, 10b–6, and 10b–7 under the Securities Exchange Act of 1934 (§§ 240.10b–2, 240.10b–6 and 240.10b–7 of this chapter).

(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 business development company and the cost of such insurance is borne by other than an insured officer or director of the registrant. 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.

§ 230.462 [Reserved]

§ 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 (§ 239.16b of this chapter) or on Form S–3 (§ 239.13 of this chapter) 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 a Form S–8 registration statement or a Form 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 [Reserved]

Amendments; Withdrawals

§ 230.470 Formal requirements for amendments.

Except for telegraphic amendments filed pursuant to Rule 473 (§ 230.473), 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.

Except as provided in Rule 447 (§ 230.447) and in Rule 478 (§ 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.

§ 230.472 Filing of amendments; number of copies.

(a) Except for telegraphic amendments filed pursuant to Rule 473 (§ 230.473), 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 eight 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 (§ 229.501 of this chapter) or Rule 481(a) (§230.481(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 (§ 229.512(d) of this chapter).

(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 an order with the date of the granting of such withdrawal shall be included in the file for the registration statement 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 an order shall be included in the file for the registration statement in the following manner: "Declared abandoned by order dated _____."

Investment Companies; Business Development Companies

Note.—The rules which comprise this section of Regulation C (§§ 230.480 to 230.485) are applicable only to investment companies and business development companies. However, the rules comprising the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494) are, unless the context specifically indicates otherwise, also applicable to such companies. See § 230.400.

§ 230.480 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 business development company 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.

§ 230.481 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 of 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 boldface 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, or the outside back cover, 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 boldface roman type as 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;" 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 in 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) (§ 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.

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement, 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 business development company 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 481(b)(2) (§ 230.481(b)(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 Rule 481(b)(1) (§ 230.481(b)(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.

§ 230.483 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 business development company 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, frachises, 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.

§ 230.484 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 business development company 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 (§ 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.

§ 230.485 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). If another posteffective 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 if ineligible to become effective pursuant to paragraph (b) of this section.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§§ 239.12, 239.17, 239.25, 239.26 and 239.27 [Removed]

16. By removing §§ 239.12, 239.17, 239.25, 239.26 and 239.27.

17. By revising Form S–1 in § 239.11 to read as follows: (Form S–1 does not appeal in the Code of Federal Regulations):

§ 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 of 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 415 under the Securities Act of 1933 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. 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 (§ 229.501 of this chapter).

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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (§ 229.504 of this chapter).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S–K (§ 229.505 of this chapter).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (§ 229.506 of this chapter).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (§ 229.508 of this chapter).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

Item 11. *Information With Respect to the Registrant.* Furnish the following information with respect to the registrant:

(a) Information required by Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business;

(b) Information required by Item 102 of Regulation S–K (§ 229.102 of this chapter), description of property;

(c) Information required by Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings;

(d) Where common equity securities are being offered, information required by Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(e) 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 3–08 of Regulation S–X;

(f) Information required by Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data;

(g) Information required by Item 302 of Regulation S–K (§ 229.302 of this chapter), supplementary financial information;

(h) Information required by Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations;

(i) Information required by Item 304 of Regulation S–K (§ 229.304 of this chapter), disagreements with accountants on accounting and financial disclosure;

(j) Information required by Item 401 of Regulation S–K (§ 229.401 of this chapter), directors and executive officers;

(k) Information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), management remuneration and transactions; and

(l) Information required by Item 403 of Regulation S–K (§ 229.403 of this chapter), security ownership of certain beneficial owners and management.

Item 12. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

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 (§ 229.511 of this chapter).

Item 14. *Indemnification of Directors and Officers.* Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 15. *Recent Sales of Unregistered Securities.* Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter).

Item 16. *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 (§ 229.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S–X (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 17. *Undertakings.* Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant 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 431 (§ 230.431 of this chapter), 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 (§ 229.301 of this chapter)) 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. Where securities being registered are to be offered in exchange for securities of any other issuer, the summary prospectus also shall contain that information as to Items 9 and 11 specified in paragraphs (e) and (f) above which would be required if the securities of such other issuer were registered on this Form.

4. 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.

18. By adding § 239.12 to read as follows (Form S–2 does not appear in the Code of Federal Regulations):

§ 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 material 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) [§ 240.12b–25(b) of this chapter) 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 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) 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 which does not itself meet the conditions of the eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

Securities and Exchange Commission

Form S–2.—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 415 under the Securities Act of 1933, 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, 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 of 15(d) of the Exchange Act and has filed all the material 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) (§ 240.12b–25(b) of this chapter) 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) 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 which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

II. Application 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 in 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.

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 (§ 229.501 of this chapter).

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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (§ 229.504 of this chapter).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S–K (§ 229.505 of this chapter).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (§ 229.506 of this chapter).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (§ 229.508 of this chapter).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

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 material retroactive restatement of financial statements, or where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses considered in the aggregate meet the test of a significant subsidiary; 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 (§ 239.308 of this chapter) 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.

Instruction. Where the registrant elects to deliver its annual report to security holders, Form 10–Q or quarterly report together with the prospectus, each document must be delivered with the preliminary prospectus, but need not be redelivered with the final prospectus if the recipient has already been given the document along with the preliminary prospectus.

(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: (i) The interim financial information required by Rule 10–01 of Regulation S–X for a filing on Form 10–Q; (ii) any information required by Rules 3–07 and 3–08 of Regulation S–X; and (iii) any financial information required because of a material disposition of assets outside the normal course of business. The financial statements shall be restated if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements, or where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, meet the test of a significant subsidiary.

(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 (§ 229.101 of this chapter).

(4) Where common equity securities are being offered, furnish information required by Item 201 of Regulation S–K (§ 229.201 of this chapter), market price and dividends on the registrant's common stock and related stockholder matters.

(5) Furnish selected financial data required by Item 301 of Regulations S–K (§ 229.301 of this chapter).

(6) Furnish supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter).

(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 (§ 229.303 of this chapter).

(8) Furnish information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulations S–K (§ 229.304 of this chapter).

Item 12. *Incorporation of Certain Information by Reference.* (a)The documents listed in (1), (2), and, if applicable, the portions of the documents listed in (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 (§ 249.310 of this chapter) 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 provisions of Rule 14a–3(b)(5) under the Exchange Act (§ 240.14a–3(b)(5) of this chapter);

(ii) financial statements and information furnished in accordance with the provisions 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 (§ 229.101 of this chapter);

(iv) where common equity securities are being offered, market price and dividends on the registrant's common equity and related stockholder matters furnished as required by Item 201 of Regulation S–K (§ 229.201 of this chapter);

(v) selected financial data furnished as required by Item 301 of Regulation S–K (§ 229.301 of this chapter);

(vi) supplementary financial information furnished as required by Item 302 of Regulation S–K (§ 229.302 of this chapter);

(vii) management's discussion and analysis of financial condition and results of operations furnished as required by Item 303 of Regulation S–K (§ 229.303 of this chapter); and

(viii) information concerning disagreements with accountants on accounting and financial disclosure furnished as required by Item 304 of Regulation S–K (§ 229.304 of this chapter).

(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.

Instruction. Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

(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.

Item 13. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

Part II. Information Not Required in Prospectus

Item 14. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S–K (§ 229.511 of this chapter).

Item 15. *Indemnification of Directors and Officers.* Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 16. *Exhibits.* Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 ofd Regulation S–K (§ 229.601 of this chapter).

Item 17. *Undertakings.* Furnish the undertakings required by item 312 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe 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 431 (17 CFR (§ 230.431 of this chapter) 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 (§ 229.301 of this chapter); 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.

19. By adding § 239.13 to read as follows (Form S–3 does not appear in the Code of Federal Regulations).

§ 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 ("Registrant Requirements") 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 ("Transaction Requirements"), provided that the requirements applicable to the

specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) below.

(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 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 (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) (§ 240.12b–25(b) of this chapter) 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.

(b) *Transaction Requirements.* Security offerings meeting and 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 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, or alternatively, the aggregate market value of the voting stock held by non-affiliates of the registrant is $100 million or more and the registrant has had an annual trading volume of such stock of 3 million shares 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. Annual trading volume shall be the volume of shares traded in any continuous twelve month period ended within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary Offerings of Certain Debt and Non-convertible Preferred Securities.* Non-convertible debt and preferred securities to be offered for cash by or on behalf of a registrant, provided such securities are "investment grade securities," as defined below. A non-convertible debt or preferred security is an "investment grade security" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(3) *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter).

(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) (§ 249.14a–3(b) of this chapter) under the Exchange Act and Items 401, 402, and 403 of Regulation S–K (§§ 249.401–249.403 of this chapter) 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.

(c) *Majority-owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(1) the registrant-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(2) the parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(1) of this section. (Primary Offerings of Certain Debt and Non-convertible Preferred Securities) are met; or

(3) the parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest. Note: In such an instance, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

(d) *Rights Offerings by Foreign Private Issuers.*

A Foreign private issuer meeting eligibility requirements in paragraphs (a)(2), (a)(3) and (a)(4) of this section may use Form S–3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20–F [17 CFR 249.220f]. In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20–F. The registrant also shall:

(1) Furnish with the prospectus (or have furnished previously) to all its shareholders resident in the United States, including those holding under American Depository Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20–F; or

(2) Furnish with the prospectus a copy of its latest filing on Form 20–F.

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 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plan, 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. With respect to majority-owned subsidiaries, see Instruction I.C. below.

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) (§ 240.12b–25(b) of this chapter) 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 satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.a.1. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.a.3. above.

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.

(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 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, or alternatively, the aggregate market value of the voting stock held by non-affiliates of the registrant is $100 million or more and the registrant has had an annual trading volume of such stock of 3 million shares 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. Annual trading volume shall be the volume of shares traded in any continuous twelve month period ended within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. *Primary Offerings of Certain Debt* and *Non-convertible Preferred Securities.* Non-convertible debt and preferred securities to be offered for cash by or on behalf of a registrant, provided such securities are "investment grade securities," as defined below. A non-convertible debt or preferred security is an "investment grade security" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

3. *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter).

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) (§ 249.14a–3(b) of this chapter) under the Exchange Act and Items 401, 402, and 403 of Regulation S–K (§§ 249.401–249.403 of this chapter) 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.

C. *Majority-owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

1. the registrant-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

2. the parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Primary Offerings of Certain Debt and Non-convertible Preferred Securities) are met; or

3. the parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest.

Note.—In such an instance, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

D. *Rights Offerings by Foreign Private Issuers.* A Foreign private issuer meeting eligibility requirements A.2., A.3. and A.4. may use Form S–3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20–F [17 CFR 249.220f]. In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20–F. The registrant also shall:

1. Furnish with the prospectus (or have furnished previously) to all its shareholders resident in the United States, including those holding under American Depository Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20–F; or

2. Furnish with the prospectus a copy of its latest filing on Form 20–F.

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 458, § 230.456 of this chapter), pursuant to the provisions of Section 8(a) of the Act (Rule 459, § 230.459 of this chapter). 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, § 230.475(a) of this chapter). 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 404, § 230.464 of this chapter). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d), § 230.473(d) of this chapter), 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 406 (§ 230.406 of this chapter)

must be processed with the Commission staff prior to the filing of such a registration statment. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (§§ 230.402 and 230.472 of this chapter) shall be filed with the Commission; *provided, however,* That the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, 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 (§ 229.501 of this chapter).

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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S–K (§ 229.504 of this chapter).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S–K (§ 229.505 of this chapter).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S–K (§ 229.506 of this chapter).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S–K (§ 229.508 of this chapter).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter), unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act.

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

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 (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act.

(b) Include in the prospectus, if not incorporated by reference therein from the reports filed under the Exchange Act specified in Item 12(a), a proxy or information statement filed pursuant to Section 14 of the Exchange Act, or a prospectus previously filed pursuant to Rule 424(c) under the Securities Act: (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 prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (iii) restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, meet the test of a significant subsidiary; or (iv) any financial information required because of a material disposition of assets outside the normal course of business.

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;

(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; and

(3) if capital stock is to be registered and securities of the same class are registered under Section 12, of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(b) The prospectus shall also state that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 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.

Instruction. Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

Item 13. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

Part II. Information Not Required in Prospectus

Item 14. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S–K (§ 229.511 of this chapter).

Item 15. *Indemnification of Directors and Officers.* Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 16. *Exhibits.* Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

Item 17. *Undertakings.* Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe 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.

20. By revising the facing sheet and signature page of Form S–6 in § 239.16 to read as follows (Form S–6 does not appear in the Code of Federal Regulations):

§ 239.16 Form S–6, for unit investment trusts registered on Form N–8B–2.

* * * * *

D. Name and complete address of agent for service:

Check box if it is proposed that this filing will become effective (immediately

upon filing or on (date)) pursuant to paragraph (b) of Rule 485.

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant, ..., (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to rule 485(b) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, * * *

* * * * *

21. 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 17–21; by redesignating Items 1–13 and by further updating certain references in Form S–8 in § 239.16b to read as follows (Form S–8 does not appear in the Code of Federal Regulations):

§ 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 415 (17 CFR 230.415) 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; Number of Copies

Original registration statements on this Form S–8 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 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 will not commence a new twenty-day period. Post-effective amendments 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 (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 406 (17 CFR 230.406) must be processed with the Commission staff prior to the filing of the 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(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

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 (§ 229.501 of this chapter).

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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.*

Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

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 Regulation S–K (§ 229.202 of this chapter).

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 (§ 229.509 of this chapter).

Item 18. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.*

Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

Part II. Information Not Required in Prospectus

Item 19. *Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 21. *Exhibits.*

Furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

Item 20. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

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 has reasonable grounds to believe 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.

22. 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 28; by redesignating the General Instructions and Items to reflect additions and removals; by revising redesignated Items 7–8, 27, 29, 31–32 and 34–35; and by further updating references in Form S–11 in § 239.18 to read as follows (Form S–11 does not appear in the Code of Federal Regulations):

§ 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 (§ 229.501 of this chapter).

(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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.*

(a) Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

(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 (§ 229.505 of this chapter).

Item 5. *Dilution.*

Furnish the information required by Item 506 of Regulation S–K (§ 229.506 of this chapter).

Item 6. *Selling Security Holders.*

Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

Item 7. *Plan of Distribution.*

Furnish the information required by Item 508 of Regulation S–K (§ 229.508 of this chapter).

Item 8. *Use of Proceeds.*

Furnish the information required by Item 504 of Regulation S–K (§ 229.504 of this chapter).

Item 9. *Selected Financial Data.*

(a) Furnish the information required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

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 (§ 229.303 of this chapter).

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 Equity and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

Item 18. *Description of Registrant's Securities.*

Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter).

Item 19. *Legal Proceedings.*

Furnish the information required by Item 103 of Regulation S–K (§ 229.103 of this chapter).

Item 20. *Security Ownership of Certain Beneficial Owners and Management.*

Furnish the information required by Item 403 of Regulation S–K (§ 229.403 of this chapter).

Item 21. *Directors and Executive Officers.*

Furnish the information required by Item 401 of Regulation S–K (§ 229.401 of this chapter).

Item 22. *Management Remuneration and Transactions.*

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter).

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 (§ 229.302 of this chapter), and the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K. (§ 229.304 of this chapter). 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 (§ 229.509 of this chapter).

Item 28. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.*

Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

Part II. Information Not Required in Prospectus

Item 29. *Other Expenses of Issuance and Distribution.*

Furnish the information required by Item 511 of Regulation S–K (§ 229.511 of this chapter).

Item 30. *Sales to Special Parties.*

* * * * *

Item 31. *Recent Sales of Unregistered Securities.*

Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter).

Item 32. *Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 33. *Treatment of Proceeds From Stock Being Registered.*

* * * * *

Item 34. *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 (§ 229.601 of this chapter).

Item 35. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe 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.

23. By removing Instructions C and E and redesignating General Instruction D as General Instruction C; by adding Items 1–4 and 8 and redesignating Items 1–6 as Items 5–7 and 9–11; by revising redesignated Items 6–7 and 9–11; by removing Instructions as to Exhibits of Form S–14 in § 239.23 to read as follows (Form S–14 does not appear in the Code of Federal Regulations):

§ 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

* * * * *

(b) If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

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 (§ 229.501 of this chapter).

Instruction. The cross-reference sheet required by Item 501 shall show the location of the information required by proxy or information rules, as specified in Item 5 of this form.

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 (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.*

Furnish the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

Item 4. *Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

Item 5. *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 6. *Additional Information Required for Reoffering by Persons and Parties Deemed To Be Underwriters.*

* * * * *

(a) Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

* * * * *

Instruction. Information in response to Item 6(a) may be included to describe public reofferings proposed to be made, if such reofferings are subject only to consummation of the transaction described in Rule 145(a).

Item 7. *Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

Item 8. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.*

Furnish the information required by Item 510 of Regulation S–K (§ 299.510 of this chapter).

Part II. Information Required in Prospectus

Item 9. *Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 10. *Exhibits.*

Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

Item 11. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe 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 consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

24. By removing General Instructions C and F and Item 10; by redesignating General Instructions D and E as General Instructions C and D; by adding Items 1, 2 and 14–15; by redesignating Items 1–14 as Items 3–17; by revising redesignated Items of Form S–15 in 10–13, 16–17; § 239.29 to read as follows (Form S–15 does not appear in the Code of Federal Regulations):

§ 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 415 (§ 230.415) 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.

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 (§ 229.501 of this chapter).

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 (§ 229.502 of this chapter).

Item 3. *Summary Information add "," Risk Factors and Ratio of Earnings to Fixed Charges.*

(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) In addition, the summary shall contain the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter).

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 equity of the company being acquired and related stockholder matters as required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

(iii) selected financial data as required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(iv) management's discussion and analysis of financial condition and results of operation as required by Item 303 of Regulation S–K (§ 229.303 of this chapter).

(v) financial statements 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 (§ 229.403 of this chapter) 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 (§ 229.401 of this chapter). 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:

(i) in the annual report to security holders delivered pursuant to Item 17 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 statements 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 address (including title or department) and telephone number to which such a request is to be directed.

Item 10. *Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.*

* * * * *

(a) Furnish the information required by Item 507 of Regulation S–K (§ 229.507 of this chapter).

* * * * *

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 statements 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 (§ 229.101 of this chapter);

(F) market price of and dividends on issuer's common equity and related stockholder matters furnished in accordance with Item 201 of Regulation S–K (§ 229.201 of this chapter);

(G) selected financial data furnished in accordance with Item 301 of Regulation S–K (§ 229.301 of this chapter); and

(H) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 303 of Regulation S–K (§ 229.303 of this chapter).

(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 (§ 229.509 of this chapter).

Item 14. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.*

Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

Part II: Information Not Required in Prospectus

Item 15. *Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 16. *Exhibits.*

Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

Item 17. *Undertakings.*

Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer certifies that it has reasonable grounds to believe 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 (§ 229.601 of this chapter) concerning signatures pursuant to powers of attorneys.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

25. By revising § 240.3b-2 to read as follows:

§ 230.3b-2 Definition of "officer."

The term "officer" means a president, vice president, secretary, treasury or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

26. 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 add "," if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (§ 229.302 of this chapter), 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 add ";" or

* * * * *

27. By revising § 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, any vice president of the registrant in charge of a principal business unit, division of function (such as sales, administration or finance), any other officer who performs a policy making function 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.

28. By revising paragraph (k) of § 240.10b–7 to read as follows:

§ 240.10b–7 Stabilizing to facilitate a distribution.

* * * * *

(k) *Disclosure of stabilizing.* Any person subject to this rule who sells to, or purchases for the account of, any person, any security or any right or warrant to subscribe to any such security, where the price of such security, right or warrant has been stabilized, shall give or send to such person, at or before the completion of each transaction entered into while the distribution is in progress, written notice that stabilizing purchases may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, offering circular, confirmation or other writing containing a statement similar to that comprising the legend provided for in Item 502(d) of Regulation S–K (§ 229.502(d) of this chapter), then no other written notice with respect to stabilizing need be given to such purchaser.

* * * * *

29. By removing § 240.12b–4 and by removing and reserving § 240.12b–24.

30. By amending Regulation 12B (17 CFR 240.12b–1 to 240.12b–36) by revising § 240.12b–1; by removing the paragraph designations in § 240.12b–2 and leaving the terms in alphabetical order; by revising the definition of the terms "certified," "control," "material," "promoter," "significant subsidiary," and "totally held subsidiary" in § 240.12b–2; by adding the definition of the terms "common equity," "managing underwriter" and "North American issuer" in § 240.12b–2 in alphabetical sequence; by revising §§ 240.12b–11, 240.12b–12 and 240.12b–23; and by adding § 240.12b–4 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.

* * * * *

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.

* * * * *

Common equity. The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

* * * * *

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.

* * * * *

Managing underwriter. The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

* * * * *

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.

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.

* * * * *

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; or

(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 (1) of this definition 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.

* * * * *

Significant subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether the past or future acquisition of another company in a business combination accounted for as a pooling of interests is significant for purposes of applying § 210.3–08 or reporting on Form 8–K, this condition is also met when the number of common shares exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

* * * * *

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 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

§ 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 information filed as an exhibit which is 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 (§ 201.24 of this chapter) 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 [Reserved]

31. By revising Instruction C of § 240.13d–101 to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

* * * * *

32. By removing paragraph (a)(2); by redesignating paragraphs (a)(3)–(a)(5) as paragraphs (a)(2)–(a)(4); and by revising paragraphs (c)(2), (e)(3)(ii) and (f)(1) and by revising the introductory texts of redesignated paragraphs (a)(3), (a)(3)(i) and (a)(3)(iii) of § 240.13e–3 to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

(a) * * *

(3) A "Rule 13e–3 transaction" is any transaction or series of transactions involving one or more of the transactions described in paragraph (a)(3)(i) of this section which has either a reasonable likelihood or a purpose of producing, either directly or indirectly, any of the effects described in paragraph (a)(3)(ii) of this section;

(i) The transactions referred to in paragraph (a)(3) of this section are:

* * * * *

(ii) The effects referred to in paragraph (a)(3) of this section are:

* * * * *

(c) * * *

(2) An issuer or affiliate which is subject to paragraph (c)(1) of this section and which is soliciting proxies or distributing information statements in connection with a transaction described in paragraph (a)(3)(i)(A) of this section may elect to use the timing procedures for conducting a solicitation subject to Regulation 14A (§§ 240.14a–1 to 240.14a–103) or a distribution subject to Regulation 14C (§§ 240.14c–1 to 240.14c–101) in complying with paragraphs (d), (e) and (f) of this section, provided that if an election is made, such solicitation or distribution is conducted in accordance with the requirements of the respective regulations, including the filing of preliminary copies of soliciting

materials or an information statement at the time specified in Regulation 14A or 14C, respectively.

* * * * *

(e) * * *

(3) * * *

(ii) set forth on the outside front cover page, in capital letters printed in bold face roman type at least as large as ten point modern type and at least two points leaded, the statement in paragraph (e)(3)(ii)(A) of this section, if the Rule 13e–3 transaction does not involve a prospectus, or the statement in paragraph (e)(3)(ii)(B) of this section, if the Rule 13e–3 transaction involves a prospectus, and in the latter case such statement shall be used in lieu of that required by Item 501(c)(5) of Regulation S–K (§ 229.501 of this chapter).

(f) * * *

(1) If the Rule 13e–3 transaction involves a purchase as described in paragraph (a)(3)(i)(A) of this section or a vote, consent, authorization, or distribution of information statements as described in paragraph (a)(3)(i)(C) of this section, the issuer or affiliate engaging in the Rule 13e–3 transaction shall:

* * * * *

33. By removing paragraph (a)(7); by redesignating paragraph (a)(8) as paragraph (a)(7); and 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 acquired over book value
- Total indebtedness
- Shareholders' equity

Per Share*
- 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

* * * * *

*Average number of shares of common stock outstanding during each period was . . . . . (as adjusted to given effect to stock dividends or stock splits)

34. By redesignating paragraphs (b)(4)–(12) as paragraphs (b)(5)–(13); adding a new paragraph (b)(4) and a new paragraph (e); and revising paragraphs (b)(3), and redesignated paragraphs (b)(5)–(9) and (12); and by revising redesignated paragraphs (b)(10), Note, and (11), introductory text, 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 (§ 229.302 of this chapter).

(4) The report shall contain information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (§ 229.304 of this chapter).

(5)(i) The report shall contain the selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(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 (§ 229.303 of this chapter).

* * * * *

(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 (§ 229.101 of this chapter).

Notes.—Paragraph (b)(11) of this section permits the information required by this paragraph to be set forth in any form deemed suitable by management

(8) The report shall identify each of the issuer's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the issuer's common equity and related stock holder matters required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

(10) * * *

Note.—Pursuant to the undertaking required by paragraph (b)(10) of this section, an issuer shall furnish a copy of its annual report on Form 10–K (§ 249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (b)(5) to (b)(10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

* * * * *

(12) Paragraphs (b)(5) through (b)(11) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(4) of this section, the annual report to security holders of such investment company may be in any form deemed suitable by management.

* * * * *

(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).

* * * * *

35. By revising paragraphs (i) and (j) to § 240.14a–6 to read as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(i) At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall pay to the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125; (2) for proxy material where a contest as set forth in Rule 14a–11 is involved, a fee of $500 from each party to the controversy; and (3) for proxy material involving acquisitions or mergers, a fee of $1,000. Where both

companies involved in the acquisition or merger must file proxy material with the Commission, each shall pay $500 of the fee. There shall be no refunds.

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–14 (§ 239.23 of this chapter) or Form S–15 (§ 239.29 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–14 or Form S–15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

36. By removing Item 14(b)(9); and revising Items 4(b)(2), 5(d), (e) and (g); 6(a); 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(a) and 20 of Schedule 14A in § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 4. *Interest of certain persons in matters to be acted upon.*

* * * * *

(b) * * *

(2) With respect to any person, other than a director or officer of the issuer acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Schedule 14B.

Item 5. *Voting securities and principal holders thereof.*

* * * * *

(d) Furnish the information required by Item 403(a) of Regulation S–K (§ 229.403(a) of this chapter) 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 (§ 229.403(b) of this chapter).

* * * * *

(g) Furnish the information required by Item 403(c) of Regulation S–K (§ 229.403(c) of this chapter).

Item 6. *Directors and executive officers.*

* * * * *

(a) The information required by Item 401 of Regulation S–K (§ 229.401 of this chapter).

* * * * *

Item 7. *Remuneration of directors and executive officers.* (See Note C at the beginning of Schedule 14A).

Furnish the information required by Item 402 (§ 229.402 of this chapter) and Instruction 4 to Item 103 of Regulation S–K (§ 229.103 of this chapter) if action is to be taken with regard to (i) the election of directors, (ii) 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, (iii) any pension or retirement plan in which any such person will participate or (iv) 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 (§ 229.402(a) of this chapter) 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 (§ 229.402 of this chapter), 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 (i) each director or officer named in answer to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) 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 7 to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter).

* * * * *

3. * * *

(c) If action is to be taken with respect to any plan in which directors or officers may participate, the information called for Items 402(d) (1) and (2) of Regulation S–K (§ 229.402 of this chapter) shall be furnished for the last five fiscal years of the issuer and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group. If any named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and by such named person and such other directors and officers as a group. The information called for by this Instruction 3(c) is in lieu of the information since the beginning of the issuer's last fiscal year called for by Items 402(d) (1) and (2) of Regulation S–K (§ 229.402 of this chapter). If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five-year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan", as the quoted terms are defined in sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in Item 402 of Regulation S–K (§ 229.402 of this chapter).

* * * * *

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 (§ 229.402(a) of this chapter) 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 (§ 229.402 of this chapter), 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 (i) each director or officer named in answer to Item 402(a) of Regulation S–K (§ 229. 402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (iii) 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 7 to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter). 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: (i) each director or officer named in answer to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter); (ii) each nominee for election as a director of the issuer; (iii) each associate of such directors, officers or nominees; and (iv) 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 (§ 229.402 of this chapter), 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 (i) each director or officer named in answer to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (iii) 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 7 to Item 402(a) of Regulation S–K (§ 229.402(a) of this chapter).

* * * * *

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 Regulations S–K (§ 229.101 of this chapter).

Instructions.

* * * * *

Ittem 15. *Financial information.*

(a) 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. If financial statements required by Regulation S–X are furnished, also furnish the supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter), information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (§ 229.304 of this chapter) and management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (§ 229.303 of this chapter).

* * * * *

Item 20. *Amendment of charter, bylaws or other documents.*

If action is to be taken with respect to any amendment of the issuer's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and the general effect of such amendment.

Instruction. * * *

* * * * *

37. By revising Item 4(b) of Schedule 14B in § 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–11c(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 (§ 229.402(f) of this chapter).

* * * * *

38. By removing § 240.14a–103.

§ 240.14a–103 [Removed]

39. By redesignating paragraphs (a)(4)–(11) as paragraphs (a)(5)–(12); adding a new paragraph (a)(4); revising paragraph (a)(3) and redesignated paragraphs (a)(7)–(9), the Note to (a)(10), and the introductory text to (a)(11) and (12) 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 (§ 229.302 of this chapter).

(4) The report shall contain the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (§ 229.304 of this chapter).

(5)(i) The report contains selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(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 (§ 229.303 of this chapter).

* * * * *

(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 (§ 229.101 of this chapter).

Note.—Paragraph (a)(11) of this section permits the information required by this paragraph to be set forth in any form deemed suitable by management.

(8) The report shall identify each of the issuer's directors and executive officers, and shall 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.

(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 (§ 229.201 of this chapter).

(10) * * *

Note.—Pursuant to the undertaking required by paragraph (a)(10) of this section, an issuer shall, furnish a copy of its annual report on Form 10–K (§ 249.310) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (a)(5) to (a)(10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

* * * * *

(12) Paragraphs (a)(5) through (a)(11) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (a)(1) through (a)(4) of this section, the annual report to security holders of such investment company

may be in any form deemed suitable by management.

* * * * *

§ 240.14d-1 [Amended]

40. By removing paragraph (a)(6) and by redesignating paragraphs (a)(7) and (a)(8) as paragraphs (a)(6) and (a)(7) of § 240.14d-1.

41. 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):
Work capital
Total assets
Total assets less deferred research and development charges and excess cost of assets acquired 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

* * * * *

* * * * *

42. By revising Item 11(e) of Schedule 14D-1 in § 240.14d-100 to read as follows:

240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

Item 11. Material to be filed as exhibits.

* * * * *

(e) In a exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information to be included therein by Rule 432 (§ 230.432 of this chapter) of that Act;

* * * * *

43. By redesignating 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, unless such issuer has been exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act, 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

44. By removing §§ 249.212, 249.214, 249.216, 249.314, 249.316 and 249.404.

45. By removing Items 1, 2, and 3: adding a new Item 1; and renumbering Item 4 as Item 2 of Form 8-A in § 249.208a to read as follows: (Form 8-A does not appear in the Code of Federal Regulations).

§ 240.208a 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 (§ 229.202 of this chapter).

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.*

* * * * *

46. 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 Form 8-B in § 249.208b to read as follows (Form 8-B does not appear in the Code of Federal Regulations):

§ 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 (§ 229.202 of this chapter).

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 as 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.

* * * * *

47. By amending Form 10 in § 249.210 to read as follows: (Form 10 does not appear in the Code of Federal Regulations):

§ 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 required by Item 101 of Regulation S-K (§ 229.101 of this chapter).

Item 2. *Financial Information.*

Furnish the information required by Items 301 and 303 of Regulation S-K (§§ 229.301 and 229.303 of this chapter).

Item 3. *Properties.*

Furnish the information required by Item 102 of Regulation S-K (§ 229.102 of this chapter).

Item 4. *Security Ownership of Certain Beneficial Owners and Management.*

Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter).

Item 5. *Directors and Executive Officers.*

Furnish the information required by Item 401 of Regulation S-K (§ 229.401 of this chapter).

Item 6. *Management Remuneration and Transactions.*

Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter).

Item 7. *Legal Proceedings.*

[1] Average number of share of common stock outstanding during each period was . . . (as adjusted to given effect to stock dividends or stock splits).

Furnish the information required by Item 103 of Regulation S–K (§ 229.103 of this chapter).

* * * * *

Item 8. *Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

Item 9. *Recent Sales of Unregistered Securities.*

Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter).

Item 10. *Description of Registrant's Securities to be Registered.*

Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter).

Item 11. *Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

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 (§ 229.302 of this chapter).

Item 13. *Disagreements With Accountants on Accounting and Financial Disclosure.*

Furnish the information required by Item 304 of Regulation S–K (§ 229.304 of this chapter).

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 (§ 229.601 of this chapter).

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) *

48. 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 General Instructions A, B, C and D, Items 1(b), 4(d), 5 and 7(b) and renumbered Instruction 5 to Item 7(a) of Form 8–K in § 249.308 to read as follows (Form 8–K does not appear in the Code of Federal Regulations):

§ 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 240.15d–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 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 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 (§ 229.403(c) of this chapter).

* * * * *

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 5. Other Events.

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, that the registrant deems of importance to security holders.

* * * * *

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.

* Print name and title of the signing officer under his signature.

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 auditing 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 by 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 (§ 229.601 of this chapter).

* * * * *

49. By adding a new General Instruction E; redesignating General Instructions E, F and G as F, G and H; and revising redesignated General Instructions F and H, Item 2 in Part I, and Items 1 and 6(a) in Part II of Form 10–Q in § 249.308a as follows (Form 10–Q does not appear in the Code of Federal Regulations):

§ 249.308a Form 10–Q, for quarterly reports under section 13 or 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 (§ 229.601 of this chapter), 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.

* * * * *

H. Omission of Information by Certain Wholly-Owned Subsidiaries

* * * * *

1. * * *

c. There is prominently set forth, on the cover page of the Form 10–Q, a statement that the registrant meets the conditions set forth in General Instruction H(1) (a) and (b) of Form 10–Q and is therefore filing this Form with the reduced disclosure format.

* * * * *

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 (§ 229.303 of this chapter).

Part II—Other Information

* * * * *

Item 1. Legal Proceedings.

Furnish the information required by Item 103 of Regulation S–K (§ 229.103) of this chapter). 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.

Instruction * * *

* * * * *

Item 6. Exhibits and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

* * * * *

50. 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 C, D and G, redesignated Instructions I and J, Items 1, 2, 3, 5, 6, 7 and 8 and renumbered Items 10, 11, 12 and 13 of Form 10–K in § 249.310 as follows (Form 10–K does not appear in the Code of Federal Regulations):

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

C. Preparation of Report

(1) 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. Except as provided in General Instruction G, the answers to the items shall be prepared in the manner specified in Rule 12b–13.

(2) * * *

* * * * *

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 report. (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

* * * * *

(2) The information called for by Parts I and II of this Form (Items 1 through 9 or any portion thereof) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(b) or Rule 14c–(a) or from the registrant's annual report to security holders, even if not furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a), provided such annual report contains the information required by Rule 14a–3.

Note.—In order to fulfill the requirements of Part I of Form 10–K, the incorporated portion of the annual report to security holders must contain the information required by Items 1–3 of Form 10–K, to the extent applicable.

(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 (§ 229.401 of this chapter) 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 (§ 229.401(b) of this chapter).

(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) (17 CFR 240.12b(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 or 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 are 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

If the registrant is subject to the reporting requirements of Section 15(d) of the Exchange Act and such obligation arises solely because the registrant has filed a registration statement on Form S–18 (17 CFR 239.28) which has become effective during the last fiscal year, the registrant may comply with the disclosure requirements of Form S–18 Item 6, Description of Business: Item 10, Remuneration of Directors and Officers; and Item 13, Interest of Management and Others in Certain Transactions, in lieu of complying with the disclosure requirements of Item 1, Business, and Item 11, Management Remuneration and Transactions, herein. Item 6 of this Form, Selected Financial Data, may be omitted at the election of such registrant.

* * * * *

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 (§ 229.601 of this chapter).

(c) Such registrants may omit the information called for by the following otherwise required Items: Item 4, Submission of Matters to a Vote of Security Holders; 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 non-affiliates 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 involving unreasonable effort and expense, the aggregate market value of the common stock held by non-affiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumptions are set forth in this Form.

* * * * *

Part I

* * * * *

Item 1. Business.

Furnish the information required by Item 101 of Regulation S–K (§ 229.101 of this chapter) 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 (§ 229.102 of this chapter).

Item 3. Legal Proceedings.

(a) Furnish the information required by Item 103 of Regulation S–K (§ 229.103 of this chapter).

(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 (§ 229.103 of this chapter), 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 quarter of the fiscal year covered by this report 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 term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and 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 14A 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 Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

Item 6. Selected Financial Data.

Furnish the information required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

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 (§ 229.303 of this chapter).

Item 8. Financial Statements and Supplementary Data.

Furnish financial statements meeting the requirements of Regulation S–X (§ 210 of this chapter) and the supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter). 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 (§ 229.304 of this chapter).

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant.

Furnish the information required by Item 401 of Regulation S–K (§ 229.401 of this chapter).

Item 11. Management Remuneration and Transactions.

Furnish the information required by Item 402 Regulation S–K (§ 229.402 of this chapter).

Item 12. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by Item 403 of Regulation S–K (§ 229.403 of this chapter).

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 (§ 229.601 of this chapter) 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 (§ 240.12b–23 of this chapter).

* * * * *

(c) Registrants shall file, as exhibits to this Form, the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

* * * * *

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

51. 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, and

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (§ 229.302 of this chapter), 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 (§ 229.303 of this chapter); or

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

52. By revising paragraphs (b) (1)(i), (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, and

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (§ 229.302 of this chapter), 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 (§ 229.303 of this chapter); or

* * * * *

53. By revising the facing sheet, signature page and Instructions as to Summary Prospectuses of Form N-1 in § 274.11 to read as follows (Form N-1 does not appear in the Code of Federal Regulations):

§ 274.11 Form N-1, registration statement of open end management investment companies.

* * * * *

☐ Check box if it is proposed that this filing will become effective (immediately upon filing or on (date)) pursuant to paragraph (b) of Rule 485.

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant, ..., (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to Rule 485(b) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, * * *

* * * * *

Instructions as to Summary Prospectuses

The summary prospectus to be used pursuant to Rule 431 (§ 230.431 of this chapter) for companies whose securities are registered on Form N-1 shall be available only if (1) a Registration Statement relating to these securities has been filed, * * *

* * * * *

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; Sec. 308(a)(2), 90 Stat. 57; Secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

By the Commission.

George A. Fitzsimmons,

Secretary.

March 3, 1982.

[FR Doc. 82-7054 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release Nos. 33-6386; 34-18527; AS-307; File No. S7-872]

Rescission of Certain Accounting Series Releases Relating to the Computation of the Ratio of Earnings to Fixed Charges

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of interpretive releases.

SUMMARY: The Commission announces rescission of two interpretive releases relating to the computation and presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends in filings with the Commission. The interpretations provided in Accounting Series Release Nos. 119 and 122 are no longer necessary because of amendments to the requirements for these ratios adopted in a separate action announced today. Similarly, the guidance for computing these ratios provided in Topics 3-B and 9-B of Staff Accounting Bulletin No. 40 is no longer necessary and is also being deleted.

EFFECTIVE DATE: March 3, 1982.

FOR FURTHER INFORMATION CONTACT: John W. Albert, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: In a separate action announced today, the Commission adopted a comprehensive revision to the rules and forms governing the registration of securities under the Securities Act of 1933.[1] These rule amendments include, among other things, the adoption of requirments for the presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends. Under these rules, requirements governing the computation and disclosure of these ratios on an historical and pro forma basis have been revised and standardized.

Prior to the adoption of these rules instructions for the computation and presentation of these ratios were contained in various Commission forms and were supplemented by related interpretations set forth in certain accounting series releases. Accounting Series Release No. 119[2] prohibits the deduction of actual or imputed interest income, investment income, or gains on retirement of debt from fixed charges for purposes of computing either the historical or pro forma ratio of earnings to fixed charges. Similarly, Accounting Series Release No. 122[3] sets forth conditions under which the ratio of earnings to fixed charges should also be presented on a total enterprise basis. These interpretations have been incorporated, with minor revisions, into the revised rules.

In view of the revised requirements for presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends adopted today, the interpretations provided in Accounting Series Release Nos. 119 and 122 are no longer necessary and are hereby rescinded. Similarly, the guidance provided in Topics 3-B and 9-B of Staff accounting Bulletin No. 40 is no longer necessary and is also being deleted.[4]

PART 211—INTERPRETIVE RELEASES RELATING TO ACCOUNTING MATTERS

COMMISSION ACTION: The Commission hereby rescinds and removes the following releases in the accounting series, Part 211 of Title 17, Chapter II, of the Code of Federal Regulations: Accounting Series Release Nos. 119, 122.

* * * * *

(Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) of the Securities Act of 1933 and Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78*o*(d), 78w(a)] of the Securities Exchange Act of 1934)

By the Commission.

George A. Fitzsimmons,

Secretary.

March 3, 1982.

[FR Doc. 82-6815 Filed 3-12-82; 8:45 am]

BILLING CODE 8010-01-M

[1] Release No. 33-6383, "Adoption of Integrated Disclosure System" (March 3, 1982) (Published elsewhere in this issue).

[2] "Computation of Ratio of Earnings to Fixed Charges," June 15, 1971 (36 FR 11918).

[3] "Coverage of Fixed Charges," August 10, 1971 (36 FR 15527).

[4] Topics 3-B and 9-B provide guidance on computing the income tax effects of preferred stock dividends and determining when a parent company ratio should also be presented, respectively. This guidance has also been incorporated into the revised rules.

17 CFR Parts 231 and 241

[Release Nos. 33-6384, 34-18525]

Rescission of Guides and Redesignation of Industry Guides

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today authorized (1) the rescission of the Guides for the Preparation and Filing of Registration Statements and Reports, with the exception of those guides which set forth disclosure guidelines for registrants in particular industries; (2) the redesignation of the remaining guides as Securities Act and Exchange Act Industry Guides; and (3) the recasting of the disclosure requirements for oil and gas operations, formerly contained in Item 2(b) of Regulation S-K, as an industry guide. This action is taken as part of the Commission's program to integrate the disclosure requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934.

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, contact Robert Pincus, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2589); thereafter contact Norman R. Schou, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today authorized the rescission by the Division of Corporation Finance of all of the Guides for the Preparation and Filing of Registration Statements and Reports ("the 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"), other than those which set forth disclosure guidelines applicable to specific industries.[1] The remaining guides have been redesignated as Securities Act Industry Guides and Exchange Act Industry Guides and a listing of such guides is contained in Items 801 and 802 of Regulation S-K [17 CFR Part 229], the central repository of disclosure requirements under the Securities Act and the Exchange Act.[2] The Division also has recast the disclosure requirements for oil and gas operations, formerly contained in Item 2(b) of Regulation S-K, as an industry guide.

The Guides, as originally adopted in 1968,[3] served as an expression of the policies and practices of the Division of Corporation Finance. They were of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff. Subsequently, the Guides were modified and expanded and additional guides added serially on an ad hoc basis.[4] Prior to 1980, however, the Guides had never been the subject of an overall review. Consistent with the Commission's "sunset" review of existing rules and regulations and the recommendation of the Advisory Committee on Corporate Disclosure,[5] the Commission undertook a sunset review of the Guides.

This review of the Guides was an integral part of the integration program and was undertaken in three stages. Initially, the Commission issued a concept release in December 1979, soliciting comments to assist in the reevaluation of the Guides.[6] In response to those comments the Commission issued a second release proposing the deletion of certain guides, as well as the centralization of others into its rules and regulations.[7] In August 1981, the final integration proposals with respect to the Guides were published.[8]

In response to the comments received with respect to these proposals, outdated or inappropriate guides were deleted while centralizing others into its rules and regulations.[9] Those guides which relate to procedural matters have been incorporated into Regulation C (17 CFR 230.400 through 230.494) and the General Rules under the Securities Act and Exchange Act, while those guides relating to disclosure requirements have been conformed and incorporated into Regulation S-K.

Those guides which set forth disclosure guidelines applicable to specific industries have been redesignated as Industry Guides which will be listed in Items 801 (Securities Act Industry Guides) and 802 (Exchange Act Industry Guides) of Regulation S-K. The list of industry guides has been moved into Regulation S-K, which serves as the central repository of disclosure requirements under the Securities Act and the Exchange Act, in order to more effectively put registrants on notice of their existence. These guides remain as an expression of the policies and practices of the Division of Corporation Finance and their status is unaffected by this change.

I. Synopsis

This section is organized into three parts: (1) The rescission of Guide 57 (Registration statements relating to "insurance premium funding" programs); (2) the redesignation of those existing guides which are industry specific, as industry guides under the Securities Act and the Exchange Act; and (3) the designation of the new guides which are adopted today.

A. Rescission of Guide 57

Securities Act Guide 57—Registration Statements Relating to "Insurance Premium Funding" Programs.

Although Guide 57 was proposed to be reclassified as an industry guide in the S-K Release,[10] the Commission has determined that it is outdated and therefore is rescinding it.

B. Redesignation of Existing Guides

1. Securities Act Guide 30—Disclosure of Principal Sources of Electric and Gas Revenues.

Guide 30 has been redesignated as Securities Act Industry Guide 1.[11]

2. Securities Act Guide 55—Prospectuses Relating to Interests in Oil and Gas Programs.

Guide 55 has been redesignated as Securities Act Industry Guide 4.

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[1] The existing Guides which are retained are: Securities Act Guide 30—Disclosure of Principal Sources of Electric and Gas Revenues; Securities Act Guide 55—Prospectuses Relating to Interests in Oil and Gas Programs; Securities Act Guide 60—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships; and Securities Act Guide 61 and Exchange Act Guide 3—Statistical Disclosure by Bank Holding Companies.

[2] *See* Release No. 33-6383 (March 3, 1982) (the "1982 Integration Release").

[3] *See* Release No. 33-4936 (December 9, 1968) [33 FR 18617].

[4] Fifty-three Guides were adopted in December of 1968, and subsequently ten guides for the preparation and filing of registration statements under the Securities Act, as well as five guides for the preparation and filing of periodic reports under the Exchange Act have been added.

[5] *See* 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).

[6] *See* Release No. 33-6163 (December 5, 1979) [44 FR 72604].

[7] *See* Release No. 33-6276 (December 23, 1980) [46 FR 78].

[8] *See* Release No. 33-6332 (August 18, 1981) [46 FR 41925] (the "S-K Release") for a table indicating the disposition of each of the Guides.

[9] *See* 1982 Integration Release, specifically Regulation S-K and Regulation C, for the centralization of the guides.

[10] *See* the S-K Release, 46 FR at 41971.

[11] *See* Paragraph C.1. below for the designation of Securities Act Guide 30 as Exchange Act Industry Guide 1.

3. Securities Act Guide 60—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships.

Guide 60 has been redesignated as Securities Act Industry Guide 5.[12]

4. Securities Act Guide 61 and Exchange Act Guide 3—Statistical Disclosure by Bank Holding Companies.

These guides have been redesignated as Securities Act Industry Guide 3 and Exchange Act Industry Guide 3, respectively.

5. All other Securities Act and Exchange Act Guides have been rescinded.

C. Designation of New Industry Guides

1. Exchange Act Industry Guide 1—Disclosure of Principal Sources of Electric and Gas Revenues.

Pursuant to industry practice, the information called for by Guide 30 is included in registration statements on Form 10 and reports filed on Form 10–K under the Exchange Act. Accordingly, this guide has been modified to make it applicable to the Exchange Act and designated as Exchange Act Industry Guide 1.

2. Disclosure of Oil and Gas Operations.

The disclosure requirement for oil and gas operations, which formerly was contained in Item 2(b) of Regulation S–K, has been recast as Securities Act Industry Guide 2 and Exchange Act Industry Guide 2. This change is consistent with the determination to place all industry specific information into the Industry Guides.

II. Text of New Industry Guides and Amendments to Redesignated Guides

The text of the new industry guides is set out in full below. Additionally, amendments to those redesignated industry guides, which were required to conform with the various components of the integrated disclosure system, also are set forth.

A. Securities Act Industry Guides[13]

Guide 1. Disclosure of Principal Sources of Electric and Gas Revenues.

In registration statements filed on Form S–1 or S–2 by electric or gas utilities, the principal classes of service from which electric or gas revenues are derived should be furnished.

Guide 2. Disclosure of 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 Guide should 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 Guide by the first proviso above 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

A. As of the end of each of the last three fiscal years estimated net quantities of:

(i) Proved oil and gas reserves;

(ii) Proved developed oil and gas reserves;

(iii) Oil and gas applicable to long-term supply or similar agreements with foreign governments or authorities in which the registrant acts as producer; and

(iv) The registrant's share of reserves of investees accounted for by the equity method.

B. 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.

C. *Instructions.* If these reserves are located entirely within the registrant's home country, that fact should 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) should be reported separately for the entity's home country (if significant reserves are located there) and each foreign geographic area in which significant reserves are located. Foreign geographic areas should consist of those individual countries or groups of countries, as appropriate, for meaningful disclosure in the circumstances.

Disclosure should 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.

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, the registrant should 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 because of requirements of foreign or state law, the documents should identify the country or state, 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 included reserves other than proved.

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 should be made; otherwise, an explanation of any such discovery or event should be provided, including, to the extent reasonable, an 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 should not apply if the difference between the total reserve estimate included in the Commission filing and the total reserve estimate file with the Federal authority or agency does not exceed five percent. However, a statement that the difference does not exceed five percent should be included.

3. Production

A. Net quantities of oil (including condensate and natural gas liquids) and of gas produced for each of the last

[12] *See* Release No. 33–6354 (October 14, 1981) [46 FR 50553] for the proposed revisions to Guide 60. The Commission expects to act on these proposals shortly.

[13] Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] is not set forth in this section, as no changes have been made to its text. For the full text of this guide *see* Release Nos. 33–5735 (August 31, 1976) [41 FR 39007]; and 33–6221 (July 8, 1980) [45 FR 47138].

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 1 of this Guide.

B. For each of the last three fiscal years by the same geographic areas for which production data are required:

(i) The average sales price (including transfers) per unit of oil produced and of gas produced;

(ii) The average production cost (lifting cost) per unit of production.

C. *Instructions.* Generally, net production should 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" should be noted.

Any part of natural gas liquids production obtained through or from processing plant ownership rather than through leasehold ownership should be reported separately, if material.

Production of natural gas should 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 should be omitted. Recovered gas-lift gas and reproduced gas should not be included until sold.

The transfer price of oil and gas produced should be determined in accordance with § 210.4–10(k)(4) of Regulation S–X.

The average production cost per unit of production should be computed using production costs disclosed pursuant to § 210.4–10(k)(3) of Regulation S–X. Units of production should 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

A. 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 3 of this Guide.

B. *Instructions.* For purposes of this paragraph, one or more completions in the same bore hole should be counted as one well. A footnote should disclose the number of wells with multiple completions. If one of the multiple completions in a given well is an oil completion, the well should be classified as an oil well.

A gross well or acre is a well or acre in which a working interest is owned. The number of gross wells is the total number of wells in which a working interest is owned.

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.

For those unusual situations in which gross and net data cannot be supplied, alternative disclosure should be furnished that adequately describes the registrant's productive wells and developed acreage.

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 leased 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

A. For each of the last three fiscal years 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.

B. *Instructions.* 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.

A productive well is an exploratory or a development well that is not a dry well.

The number of wells drilled refers to the number of wells (hole) completed at any time during the fiscal years, regardless of when drilling was initiated.

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 should 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 should include only those wells actually being drilled at the "as of" date and should be expressed in terms of both gross and net wells. The disclosure should 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 exisiting contracts or agreements, material information concerning the estimated availability of oil and gas from any principal sources.

A. Such information should be furnished as to current and future reserves and supplies, and should:

(i) 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;

(ii) Disclose the total quantities of oil and gas which are subject to delivery commitments; and

(iii) Indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information should be provided for an appropriate period of one to three years.

B. 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.

C. The registrant should develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure should be in a form understandable to investors and should include, but not be limited to, a description of the following factors:

(i) Significant supplies dedicated or contracted to the registrant;

(ii) 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;

(iii) 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);

(iv) 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

(v) Any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractual obligations. See Item 303 of Regulation S–K.

D. 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.

Guide 4. Prospectus Relating to Interests in Oil and Gas Programs.[14]

Disclosure in prospectuses relating to oil and gas drilling programs should appear in the sequence indicated below, except that the table of contents, required by Item 502(g) of Regulation S–K to be included in the forepart of the prospectus may be inserted at any appropriate place in the sequence of disclosures.

* * * * *

1. Summary of Program. * * *

The tabular presentation specified in Item 501(g) of Regulation S–K may be omitted;

* * * * *

11. Management. Include the disclosures required by Items 401 through 403 of Regulation S–K as to, respectively, the management and operating companies.

* * * * *

Guide 5. Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships.[15]

* * * * *

1. Cover page.

* * * * *

B. The cover page should set forth, in addition to basic information about the offering, 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.

* * * * *

4. Compensation and fees to the general partners and affiliates.

* * * * *

D. Where the General Partner or an affiliate receives a disproportionate interest in the partnership in relation to its own contribution, registrants attention is directed to Item 506 of Regulation S–K. A bar chart comparison of the various interests and contributors should be provided.

* * * * *

6. Fiduciary responsibility of the General partner.

* * * * *

Indemnification.

* * * * *

Registrant's attention is also directed to Items 510 and 512(i) of Regulation S–K relating to disclosure of indemnification agreements.

7. Risk factors.

A. This section should include a carefully organized series of short, concise subcaptioned paragraphs, with cross-references to fuller discussion where appropriate, summarizing the principal risk factors applicable to the offering and to the partnership's particular plan of operations. The risk factors section should be brief.

* * * * *

8. Prior performance of the general partner and affiliates.

* * * * *

B. The information required by Item 401(f) of Regulation S–K applies to the General Partner (its officer and directors, if a corporation) or any of its affiliates who may be doing business with the partnership should be included.

* * * * *

9. Management.

A. If a material portion of the maximum net proceeds (allowing for reserves) is not committed to specific properties, disclosure should be made of the identity of the individuals who will make the investment decisions with appropriate background information including that required by Item 401(f) of Regulation S–K.

* * * * *

21. Undertakings.

* * * * *

D. * * *

The registrant undertakes to file a current report on Form 8–K to reflect each commitment (i.e., the signing of a binding purchase agreement made after the effective date of the offering involving the use of 10% or more (on a cummulative basis) of the net proceeds of the offering and to provide the information contained in such report to the Limited Partners at lest once each quarter after the distribution period of the offering has expired. The report to Limited Partners will contain the financial statements required by Rule 3–14 of Regulation S–X, or, at the discretion of the registrant, a summary of the full financial statements with a statement that the full financial statements will be sent upon request.

* * * * *

Table II

* * * * *

9. CASH GENERATED (DEFICIENCY)[3] $——

10. Cash Distribution to Partners $——

* * * * *

12. Special Items[4]

* * * * *

Federal Income Tax Deductions [5]

* * * * *

Cash Distribution to Partners

* * * * *

[14] For the full text of Securities Act Industry Guide 4, *see* Release No. 33–5036 (January 19, 1970).

[15] For the full text of Securities Act Industry Guide 5, *see* Release Nos. 33–5465 (March 1, 1974) [30 FR 10278]; and 33–5745 (September 27, 1976) [41 FR 43398].

[3] All sources and uses of cash from refinancings, purchase and sales of properties, loans and other similar items not directly associated with partnership operations, which result in a material cash effect, should be individually disclosed in line 13 for those periods in which such transactions occur.

[4] Any expense items challenged by IRS should be indicated in a footnote.

[5] In any interim period * * *

Instruction: The foregoing tabulation should include: (a) Summary Income and Expense Data prepared on the basis of Generally Accepted Accounting Principles (GAAP), (b) adjustments necessary to compute GAAP Net Income (Loss) to compute Taxable Income (Loss), (c) adjustments necessary to Taxable Income to compute Cash Generated (Deficiency) and (d) Tax Deductions and cash distribution data both on an income and cash basis.

B. Exchange Act Industry Guides [16]

Guide 1. Disclosure of Principal Sources of Electric or Gas Revenues.

In registration statements filed on Form 10 or reports filed on Form 10-K by electric or gas utilities, the principal classes of service from which electric or gas revenues are derived should be furnished.

Guide 2. Disclosure of Oil and Gas Operations.

(The text of this Guide is the same as Securities Act Industry Guide 2—Disclosure of Oil and Gas Operations)

III. Revisions of 17 CFR Parts 231 and 241

17 CFR Chapter II is amended as follows:

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

* * * * *

1. Part 231 is amended by rescinding the following guides of the Guides for the Preparation and filing of Registration Statements Under the Securities Act of 1933:

Guide 1—Pre-filing conferences with registrants.
Guide 2—Letter of comment.
Guide 3—Applicability of amended rules and forms to previously filed statements.
Guide 4—Registration of securities for delayed offering.
Guide 5—Preparation of prospectuses.
Guide 6—Introductory statements.
Guide 7—Dating of prospectuses.
Guide 8—Pictorial or graphic representation in prospectuses.
Guide 9—Promoters.
Guide 10—Registration of options, warrants or rights and other securities issued or sold to underwriters.
Guide 11—Finders.
Guide 12—Over-the-counter trading in rights or warrants.
Guide 13—Market quotations—Absence of established market.
Guide 14—Underwriters' compensation from conversion of funds into foreign currency.
Guide 15—Expenses of issuance and distribution.
Guide 16—Underwriters' experience and due diligence inquiry.
Guide 17—Disclosure of underwriting discounts and commissions.
Guide 18—Original issue discount of debt securities.
Guide 19—Distribution of preliminary prospectus.
Guide 20—Mailing of amended preliminary prospectus to regional offices.
Guide 21—Use of proceeds.
Guide 24—Currencies in which amounts are to be stated by foreign issuers.
Guide 25—Manner of showing distributions by real estate syndicates and real estate investment trusts.
Guide 27—Names of customers and competitors.
Guide 28—Disclosure of extractive reserves and natural gas supplies.
Guide 29—Disclosure of material long-term leases.
Guide 31—Disclosure of recent developments—Backlog.
Guide 32—Liability of shareholders to laborers, servants or employees under state law.
Guide 33—Notice of redemption of convertible securities or callable warrants.
Guide 34—Executive committee.
Guide 35—Identification of members of board of directors selected by the underwriters.
Guide 36—Effect of issuance of options or warrants to certain persons.
Guide 37—Consents of accountants.
Guide 38—Consents of attorneys.
Guide 39—Charter amendments authorizing new securities.
Guide 40—Underwriting agreements.
Guide 41—Specimen bond.
Guide 42—Reports or memoranda concerning the registrant.
Guide 43—Representations from selling security holders.
Guide 44—Securities Act exemption for shares subject to option.
Guide 45—Information as to over-the-counter market for securities to be registered.
Guide 46—Statement as to indemnification.
Guide 47—Enforceability of civil liabilities under the Act against foreign persons.
Guide 48—Annual reports to security holders.
Guide 49—Revision of prospectuses where a company and its employee plan have different fiscal years.
Guide 50—Disclosure of confidential material to other government agencies.
Guide 51—Release of price data on subscription offerings by listed companies.
Guide 52—Disclosure as to listing on an exchange.
Guide 53—Secondary distributions "at the market".
Guide 54—Misleading character of certain registrants' names.
Guide 56—Interests of counsel and experts in the registrant.
Guide 57—Registration statements relating to "insurance premium funding" programs.
Guide 58—Disclosure in prospectus of registrant's business address and telephone number.
Guide 59—Summary of disclosure in the prospectus.
Guide 62—Disclosure of projections of future economic performance.
Guide 63—Disclosure relating to management remuneration by certain foreign private issuers.

2. Part 231 is amended by redesignating Guide 30—"Disclosure of Principal Sources of Electric and Gas Revenues" of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 as Securities Act Industry Guide 1.

3. Part 231 is amended by redesignating Guide 55—"Prospectuses Relating to Interests in Oil and Gas Programs" of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 as Securities Act Industry Guide 4.

4. Part 231 is amended by redesignating Guide 60—"Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships" of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 as Securities Act Industry Guide 5.

5. Part 231 is amended by redesignating Guide 61—"Statistical Disclosure by Bank Holding Companies" of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933, as Securities Act Industry Guide 3.

6. Part 231 is amended by adding this release, Release No. 33-6384 (March 3, 1982) to the list of interpretive releases set forth thereunder.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

7. Part 241 is amended by rescinding the following Guides for the Preparation and Filing of Reports and Proxy and

[16] Exchange Act Industry Guide 3 [Statistical Disclosures by Bank Holding Companies] is not set forth in this section, as no changes were made to its text. For the full text of this guide *see* Release No. 33-5735 (August 31, 1976) [41 FR 39007]; and 33-6221 (July 8, 1980) [45 FR 47138].

Registration Statements under the Securities Exchange Act of 1934:

Guide 2—Disclosure of extractive reserves and natural gas supplies.
Guide 4—Integrated reports to security holders.
Guide 5—Disclosure of projections of future economic performance.

8. Part 241 is amended by redesignating Guide 3—"Statistical Disclosure by Bank Holding Companies" of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934, as Exchange Act Industry Guide 3.

9. Part 241 is amended by adding this Release, Release No. 34–18525 (March 3, 1982) to the list of interpretive releases set forth thereunder.

By the Commission.

George A. Fitzsimmons,

Secretary.

March 3, 1982.

[FR Doc. 82–6688 Filed 3–12–82; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release Nos. 33-6385; 34-18526; IC-12265]

Withdrawal of Rule Proposals Relating to Integrated Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposals.

SUMMARY: The Commission is withdrawing three proposed forms and six proposed rules that were published for comment in connection with the Commission's integrated disclosure program. As a result of public comment and further study, the Commission believes that these proposals are unnecessary or superfluous in light of other components of the integrated disclosure system adopted in final form today. Proposed Forms A, B and C were replaced by Forms S-3, S-2 and S-1, respectively, as the major Securities Act of 1933 registration forms. Changes in Regulation S-K and Regulation C have obviated several proposed technical and procedural amendments. Finally, the Commission is withdrawing, in response to public comment, a proposed rule that would have provided that the effective date of an incorporated document for purposes of section 11(a) of the Securities Act of 1933 is the date of its initial filing with the Commission.

EFFECTIVE DATE: March 16, 1982.

FOR FURTHER INFORMATION CONTACT: William L. Larsen (202-272-2604), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In a separate release issued today,[1] the Commission announced the adoption of a comprehensive revision of the rules and forms governing the registration of securities under the Securities Act of 1933 (the "Securities Act"). This action represents the final step in 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. In this release, the Commission is withdrawing certain rules and forms that were proposed at various stages in connection with the Commission's integration program but are not being adopted.

Proposed Forms A, B and C were published for comment in September 1980.[2] The three Forms were intended to become the basic forms used to register securities under the Securities Act in the Commission's proposed integrated disclosure system. As discussed in a subsequent release issued in August 1981,[3] both as the result of commentators' suggestions and of further study by the Commission, proposed Forms A, B and C were replaced by proposed Forms S-3, S-2 and S-1, respectively. After further public comment, Forms S-1, S-2 and S-3 were adopted today.[4]

The ABC Release also proposed a technical amendment to Securities Act Rule 170, (17 CFR 230.170.)[5] To coordinate with the Summary Information item of proposed Forms A, B and C, the proposed amendment would have allowed condensed pro forma financial statements in the prospectus summary even though an offering was not on a firm commitment or best-efforts "all or none" basis. Since a prospectus summary is no longer required in Forms S-1, S-2 and S-3, but may be included where appropriate, the proposed amendment to Rule 170 is no longer necessary.[6]

As part of the integrated disclosure program, the Commission proposed, in December 1980, to reorganize Regulation S-K and to eliminate the Guides for the Preparation and Filing of Registration Statements and Reports while incorporating some of the Guide requirements onto Regulation S-K, Regulation C or into other rules and regulations under the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act").[7] In connection with this proposal, the Commission proposed that four rules be added to Regulation C. Rule 400a was proposed to incorporate aspects of Guide 1, Pre-Filing Conferences with Registrants.[8] Rule 400b was proposed to incorporate aspects of Guide 16, Underwriters' Experience and Due Diligence Inquiry; Guide 17, Disclosure of Underwriting Discounts and Commissions; and Guide 45, Information as to Over-the-Counter-Market for Securities to be Registered.[9] Rule 424a was proposed to incorporate aspects of Guide 42, Reports or Memoranda Concerning the Registrant.[10] incorporate aspects of Guide 49, Revision of Prospectuses Where a Company and its Employee Plan Have Different Fiscal Years.[11]

Proposed Rule 400a is being withdrawn because the Commission agrees with the public comment that Rule 202.2 of the Commission's Informal and Other Procedures (17 CFR 202.2) adequately covers prefiling conferences.[12] Rule 424a is being withdrawn because its provisions are incorporated substantially in newly adopted Rule 418 (17 CFR 230.418).[13] The Commission also has determined after further study and public comment that Rules 400b and 434a, which were proposed to be adopted in the Guides Release, are unnecessary.[14]

Finally, the Commission is withdrawing proposed Rule 412, which would have provided that the effective date of an incorporated document for purposed of section 11(a) of the Securities Act is the date of its initial filing with the Commission.[15] A number of commentators opposed the adoption of proposed Rule 412 as unnecessary and confusing to subject persons. In light of these problems, the Commission is withdrawing proposed Rule 412.[16]

Dated: March 3, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-6755 Filed 3-12-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 33-6387; 34-18528; IC-12266; File No. S7-921]

Prohibitions Against Trading by Persons Interested in a Distribution

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to Rule 10b-6 under the Securities Exchange Act of 1934 ("Act") that regulates trading in securities by persons who are participating in a distribution of those

[1] Release No. 33-6383 (March 3, 1982) (the "1982 Integration Release").

[2] Release No. 33-6235, 45 FR 63693 (September 2, 1980) (the "ABC Release")

[3] Release No. 33-6331, 46 FR 41902 (August 6, 1981) (the "S-1-2-3 Release")

[4] 1982 Integration Release, *supra*, note 1.

[5] 45 FR 63703, note 66.

[6] *See* Release No. 33-6332, 46 FR 41934, note 22 (August 6, 1981) (the "S-K Release").

[7] *See* Release No. 33-6276 46 FR 78 (December 23, 1980) (the "Guides Release").

[8] Guides Release at 46 FR 86.

[9] *Id.* at 85, 94 and 98.

[10] *Id.* at 85 and 98.

[11] *Id.* at 86 and 99.

[12] *See* Release No. 33-6333, 46 FR 41971, 41980 (August 6, 1981) (the "Regulation C Release").

[13] *Id.* At the time the Regulation C Release was issued, Rule 418 was designated Rule 419, but the Rule was renumbered in the 1982 Integration Release, *supra*, note 1.

[14] S-K Release at 46 FR 41928. With respect to proposed Rule 400b, *see* the 1982 Integration Release, *supra* note 1.

[15] *See* Release No. 33-6335, 46 FR 42015, 42022 (August 6, 1981) (the "Liability Release").

[16] 1982 Integration Release, *supra*, note 1.

securities. If adopted, the amendments, among other things, would define the term "distribution" for purposes of that rule, permit participants in a distribution of securities to continue trading such securities until three business days before commencement of the sales of the securities being distributed, and clarify the applicabilty of the rule to persons who participate in a delayed offering of securities by the issuer. In addition, the amendments would codify several existing staff positions under the rule with respect to the applicability of the exceptions to the rule. The Commission also is publishing for comment an amendment to Rule 10b–8 under the Act which applies to purchases during rights offerings. The amendment will extend the scope of the rule to cover purchasing activity by broker-dealers who act as "standby underwriters" in connection with a call for redemption by an issuer of its convertible securities. Finally, the Commission is proposing for comment certain technical conforming amendments to Rule 10b–8 and to Rule 10a–1 under the Act which governs short sales.

DATE: Comments should be submitted on or before April 30, 1982.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C., 20549, and should refer to File No. S7–921. All submissions will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549: John B. Manning, Jr. (202–272–2874); Mary Chamberlin (202–272–2880); M. Blair Corkran, Jr. (202–272–2853); Kenneth B. Orenbach (202–272–2871); Carlos M. Morales (202–272–2876); Joel M. Bludman (202–272–2846); Allyn C. Shepard (202–272–2878); Eric E. Miller (202–272–2882); or Eneida Rosa (202–272–2828).

SUPPLEMENTARY INFORMATION:

Introduction

The Securities and Exchange Commission is publishing for comment amendments to Rule 10b–6 (§ 240.10–6) under the Act. If adopted, these amendments generally would define the term "distribution" for purposes of rule, relax the prohibitions of the rule and codify existing staff positions concerning some of the exceptions to the rule. In addition, the Commission is publishing for comment a related amendment to Rule 10b–8 (§ 240.10b–8) under the Act which applies to purchases during rights offerings. The amendment will extend the scope of the rule to cover purchasing activity by broker-dealers who act as "standby underwriters" in connection with a call for redemption by an issuer of its convertible securities.

Rule 10b–6 is an anti-manipulative rule that, subject to certain exceptions, prohibits persons who are engaged in a distribution of securities from bidding for or purchasing, or inducing other persons to bid for or purchase, such securities, any security of the same class and series as those securities, or any right to purchase any such security until they have completed their participation in the distribution. The purpose of the rule is to prevent participants in a distribution from artificially conditioning the market for the securities in order to facilitate the distribution. The rule is designed to protect the integrity of the auction market as an independent pricing mechanism and thereby enhance investor confidence in the marketplace. The rule contains eleven exceptions to its general prohibitions that are designed to facilitate an orderly distribution of securities or limit disruption in the trading market for the securities being distributed.

Rule 10b–6 was adopted together with Rules 10b–7 (§ 240.10b–7) and 10b–8 in 1955[1] after years of Commission and industry experience under the antifraud and anti-manipulative provisions of the federal securities laws. In large measure, the rules codified principles established in prior administrative interpretations and proceedings concerning trading activity in connection with distributions.[2] Rule 10b–6 has been, and continues to be, one of the most important means of ensuring that the marketplace is free of manipulative practices.

Nevertheless, since 1955, the structure and operation of the securities markets have changed dramatically. The dissemination of market information with respect to securities transactions has been vastly improved. Also since that time, the techniques that have been developed to effect distributions of securities, including public offerings an in connection with business combinations, have become increasingly complex while the entire process by which securities are registered for sale has been streamlined.

Many of these developments have raised questions under Rule 10b–6 that were not contemplated when the rule was adopted, or have involved transactions that would be prohibited if the rule were literally applied but which do not present a significant opportunity for manipulative abuse. Through the exemptive and no-action interpretive process, the Commission and its staff have attempted to accommodate the rule to changing business needs to the extent consistent with its anti-manipulative purpose. A result of this process, however, has been the development of staff positions concerning the interpretation of the rule in the context of various kinds of transactions which have required application to the Commission for exemptive relief, or which have not received adequate publicity and therefore have created a degree of uncertainty among members of the securities community. The Commission believes that the amendments will eliminate much of this uncertainty and substantially reduce the need to seek interpretive relief under the rule.

The changes in the markets since the rule was adopted also have raised the more fundamental question of whether the general prohibitions of the rule are more restrictive than necessary to accomplish its purposes. Under existing standards of the rule, for example, broker-dealers that participate in an underwritten public offering on behalf of an issuer whose securities are traded exclusively on a national securities exchange are often prohibited from making any market purchases of those securities that are not specifically excepted by the rule for a substantial period before the registration statement is declared effective. In many cases, this period may be longer than is necessary to dissipate the market effect of purchases by those broker-dealers. In addition, although the rule permits certain participants in a distribution of securities that are traded in the over-the-counter market to continue market-making activity in those securities until ten business days before the commencement of the distribution, it has been argued that the length of the "cooling-off" period has resulted in a significant decrease in liquidity in the market for those securities and adversely affected the pricing of the

[1] Securities Exchange Act Release No. 5194 (July 5, 1955). *See also* Securities Exchange Act Release Nos. 5040 (May 18, 1954) (publishing proposals for comment), and 5159 (April 19, 1955) (publishing revised proposals for comment).

[2] *See, e.g.*, Securities Exchange Act Release Nos. 3505 and 3506 (November 16, 1943).

offered securities.[3] In this regard, the National Association of Securities Dealers ("NASD") has submitted a letter, dated November 19, 1981, discussing this problem and related concerns under the rule, and has suggested revisions to the rule.[4]

The application of Rule 10b–6 has also raised special concerns in the context of Rule 415 under the Securities Act of 1933 ("Securities Act") which now permits, on a temporary basis, additional kinds of "shelf" offerings by issuers.[5] Among the issues raised are the manner in which the term "distribution" should be interpreted in the context of these kinds of offerings, and the applicability of the rule generally to persons who participate in such offerings. The Commission solicited comment on these and other market-related issues in the two releases proposing Rule 415, then denominated as Rule 462A, for comment.[6]

In light of all of these concerns, the Commission has re-examined Rule 10b–6 and is publishing for comment comprehensive amendments to the rule. These proposals not only would codify existing staff interpretations of the rule, but also would significantly relax the prohibitions of the rule generally in a manner that the Commission believes shoulf continue to preserve the integrity of the marketplace. If the proposals are adopted, the rule would permit underwriters and prospective underwriters to continue purchasing activity until three business days before commencement of any offers or sales in a distribution. The rule would not distinguish between distributions of securities traded in the over-the-counter market and those traded on an exchange. In addition, the rule would permit issuers and certain related persons to make purchases of the issuer's stock that is the subject of a distribution until three business days before commencement of any offers or sales in the distribution. The amendments also would clarify the applicability of the rule to persons who participate in "shelf" offerings under new Rule 415.

The Commission also is proposing to define the term "distribution" for purposes of the rule. The definition would codify the principles established through administrative and judicial decisions, and would provide that sales of securities that are made in compliance with the volume and manner of sale limitations of Rule 144 (§ 230.144) under the Securities Act will not constitute distributions for purposes of Rule 10b–6.

The discussion concerning the proposed amendments to Rule 10b–6 is divided into three parts. The first discusses the proposed definition of the term "distribution" for purposes of the rule, including the Commission's views on the manner in which that term would be interpreted in the context of shelf offerings under Rule 415. The second part discusses the relaxation of the rule's prohibitions generally by amendment to Exception (xi) and proposed Exception (xii) which would be available to issuers and other persons. A specific discussion has been included concerning the operation of these exceptions in an offering conducted under Rule 415. The third part of the discussion details the proposed amendments to exceptions (ii), (iii), (iv) and (vii) of the rule (and certain conforming changes to Rule 10a–1 (§ 240.10a–1) under the Act and Rule 10b–8), proposed new exceptions that relate to purchases of certain debt securities, the status of "overallotment" options for purposes of the rule, and the proposed amendment to Rule 10b–8 in connection with standby underwriting arrangements.

I. The Term "Distribution" for Purposes of Rule 10b–6

A. Proposed Definition

Rule 10b–6 does not expressly define the term "distribution." Nevertheless, judicial and administrative cases consistently have held that the primary indicia of a distribution for purposes of the rule are the magnitude of the offering or the types of selling efforts and selling methods utilized by the seller or its agents.[7] While employing these factors to determine the existence of a distribution, the Commission historically has declined to adopt an explicit definition of the term, preferring instead to determine on a case-by-case basis whether a particular transaction or series of transactions constitutes a distribution for purposes of Rule 10b–6.[8] The primary advantage of such an *ad hoc* approach has been the flexibility it provides for the courts and the Commission to apply the rule to a large and continually evolving variety of transactions that may give rise to manipulative potential. On the other hand, this approach has resulted in a lack of certainty for persons engaged in the securities business as to the parameters of the concept of distribution for purposes of the rule.

The Commission has reconsidered its traditional position and is now proposing a definition of the term distribution in order to provide guidance to the investment community concerning the scope of Rule 10b–6.[9] The NASD, in connection with its proposed revisions to various portions of Rule 10b–6, has also suggested a definition of distribution.[10] The Commission shares the NASD's concern that persons potentially subject to the prohibitions of Rule 10b–6 should be provided added assistance in determining whether their activities constitute a distribution within the meaning of the rule. Indeed, substantial benefits may be realized from an added degree of predictability concerning the types of activities that are contemplated by the term.

The Commission's proposed definition would, in broad terms, codify the current case law. The proposed definition distribution for purposes of Rule 10b–6 from ordinary trading transactions and the normal conduct of a securities business by reference to the magnitude of the offering or the presence of special selling efforts or the payment of increased amounts of compensation in connection with the sale of the subject securities.[11] It also would provide that transactions which comply with the volume and manner of sale provisions of Rule 144 under the Securities Act will not be deemed to

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[3] *See* Section II.A., *infra.*

[4] *See* letter dated November 19, 1981 from Frank J. Wilson, Esq., Executive Vice President, NASD, to Douglas Scarff, Director, Division of Market Regulation ("NASD Letter") which is publicly available in File No. S7–921.

[5] *See* Securities Act Release No. 6383, (March 3, 1982), adopting the integrated disclosure proposals. Rule 415 has been adopted for a period of nine months. In June, 1982, the Commission will hold public hearings on issues raised by Rule 415.

[6] *See* Securities Act Release Nos. 6276 (December 23, 1980), 46 FR 78 (1980); 6334 (August 18, 1981) 46 FR 42001 (1981).

[7] *See, e.g., In the Matter of Bruns, Nordeman & Co.*, 40 SEC 652 (1961). These criteria identify offerings of securities that may present an incentive for participants to engage in manipulative purchasing activities.

[8] *See, e.g., In the Matter of Collins Securities Corp.*, Securities Exchange Act Release No. 11766 (Oct. 23, 1975) *rev'd on other grounds, Collins Securities Corp. v. SEC*, 502 F.2d 320 (D.C. Cir. 1977); *In the Matter of F.S. Johns & Co., Inc.*, 43 SEC 124 (1966); *In the Matter of Theodore A. Landau*, 40 SEC 1119 (1962).

[9] Following its review of any comments received with respect to the proposed definition of distribution, the Commission intends to publish a release, in a question and answer format, addressing specific situations and fact patterns that have caused uncertainty in connection with the scope of a distribution within the meaning of Rule 10b–6.

[10] *See* NASD Letter at 6–7.

[11] Payment of increased compensation gives rise to an incentive on the part of an agent acting for the issuer or selling shareholder to engage in special selling efforts, including the solicitation of customer orders to purchase the securities being sold.

constitute distributions for purposes of Rule 10b–6.

The NASD's proposal would define the term distribution as any "public offering" of securities, whether or not subject to registration under the Securities Act, provided that the amount of securities to sold exceeds that permitted by paragraph (e) of Rule 144. Furthermore, the NASD, like the Commission, would distinguish a distribution from ordinary selling activities by requiring the presence of selling efforts or compensation, either of which is greater than that normally found in connection with the ordinary trading activities of market professionals.

A "public offering" is a term that under the Securities Act, has a generally accepted meaning.[12] In a "public offering" the securities to be sold must be offered only pursuant to an effective registration statement. The effective date of a registration statement controls the commencement of a public offering under the Securities Act. For purposes of Rule 10b–6, however, the Commission has consistently taken the position that a distribution of securities to be sold pursuant to a public offering under the Securities Act may commence not only before a registration statement with respect to those securities has become effective, but even before such statement has been filed with the Commission. A distribution commences at the point when the incentive to enage in manipulative conduct is first present. Accordingly, with respect to the issuer, a distribution generally is deemed to commence at the time that a determination to go forward with the public offering is made. An underwriter is deemed to be a participant in a distribution from the time it reaches an agreement with the issuer with respect to a future public offering. In addition, the Commission has held that a distribution for purposes of Rule 10b–6 is not limited to a "public offering under the Securities Act.[13] This position recognizes the fact that the potentially manipulative market effects that Rule 10b–6 was designed to prevent may occur in connection with non-public offerings that are distinguishable from ordinary trading transactions.[14] These long-standing interpretations under Rule 10B–6 make it evident that a distribution and a public offering are not synonymous for purposes of the rule.[15]

The Commission also is not inclined to adopt a *per se* volume test in order to determine the existence of a distribution for purposes of Rule 10b–6. Concentrating solely on the magnitude of the offering ignores the fact that the sale of an amount of securities that is within the volume limits of Rule 144 may nevertheless, as a result of the selling methods utilized, give rise to a distribution for purposes of Rule 10b–6.[16] The Commission proposes, however, to codify the staff's view that sales of any securities made in compliance with both the volume limitations [17] and the "manner of sale" provisions [18] of Rule 144 will not be deemed to be a distribution for purposes of the Rule 10b–6.

Pursuant to the "manner of sale" provisions of Rule 144, securities must be sold either in brokerage transactions [19] or in transactions directly with a "market maker" within the meaning of the Act.[20] The purpose of these restrictions is to ensure that sales pursuant to Rule 144 will be made only in routine trading transactions and in a manner expressly designed not to disrupt normal market operations. In order to qualify for the protection from liability that Rule 144 provides, a seller is also prohibited from either soliciting orders from prospective purchasers to buy the securities or making any special compensation arrangements in connection with the sale of such securities.[21] A Rule 10b–6 distribution is often evidenced by extraordinary selling methods and efforts to dispose of the securities that are greater than those normally engaged in by market participants in the day-to-day transaction of their business. In view of the conditions imposed by Rule 144 on both the amount of securities that may be sold and the manner in which such sales are required to take place, the Commission believes that it would be difficult to identify a distribution if all such conditions are satisfied.

Commentators are specifically requested to address the question of whether the proposed definition would meet the perceived need for certainty within the context of Rule 10b–6 or whether it would be preferable to retain the current practice of determining the existence of a distribution for purposes of Rule 10b–6 on a case-by-case basis.

B. Application of the Term "Distribution to Shelf-Registered Offerings

The term "distribution" will have special significance in the context of certain of the offerings now permitted by Rule 415 under the Securities Act. That rule permits the registration of securities that are to be offered and sold on a delayed or continuous basis. Among other things, the rule permits an issuer to sell securities registered on a shelf in a succession of different kinds of offerings. It is designed to facilitate capital formation by granting ready access to the trading market. In the releases proposing Rule 462A for comment,[22] the Commission specifically requested comment on how the term distribution should be interpreted in connection with these offerings.

In the Commission's view, the determination of whether a distribution exists for purposes of Rule 10b–6 in the context of a shelf-registered offering should depend on the same factors that indicate an incentive to manipulate in connection with any offering of securities. Accordingly, the definition of distribution proposed above would have the same application in the context of a shelf-registered offering as in the more traditional forms of distributions. Whether a shelf-registration will constitute a distribution for purposes of Rule 10b–6 will depend on factors that include the number of shares that are to be registered for sale by the issuer and the percentage of the outstanding shares, the public float and the trading volume that those shares represent. If the registrant, when disclosing its proposed plan of distribution, reserves the right to utilize techniques that might entail selling efforts or compensation of the type normally associated with a distribution, the entire shelf-registered offering will be deemed to constitute a single distribution for purposes of Rule 10b–6.[23] Applying this analysis, the Commission believes that many shelf-registered offerings will constitute Rule 10b–6 distributions.[24]

[12] *See, e.g.*, Section 4(2) of the Securities Act and Rules 146, 152 and 155 thereunder.

[13] *See, e.g., In the Matter of J.H. Goddard & Co., Inc.*, Securities Exchange Act Release No. 7618 (June 4, 1965).

[14] *See, e.g., In the Matter of Collins Securities Corp.*, Securities Exchange Act Release No. 11766 (Oct. 23, 1975) at 13–14.

[15] *See id.* at 13.

[16] *See* Securities Act Release Nos. 5979 (Sept. 19, 1978) and 6286 (Feb. 6, 1981) at nn. 7 and 13.

[17] Rule 144(e).

[18] Rule 144(f).

[19] "Brokerage transactions" are described in paragraph (g) of Rule 144.

[20] Section 3(a)(38) of the Act defines "market maker."

[21] Rule 144(f)(1)–(2).

[22] *See* note 6, *supra*.

[23] The same factors will be employed to determine whether a secondary offering of securities registered on the shelf will give rise to a distribution for purposes of Rule 10b–6. For purposes of a Rule 10b–6 distribution, a secondary offering made pursuant to Rule 415 will be treated in the same way as a primary shelf-registered offering.

[24] The commentators that addressed the question of the interpretation of the term "distribution" in the context of shelf-registered offerings suggested that issuers and market professionals should be viewed

Continued

For purposes of shelf-registered offerings, an issuer should be deemed to be engaged in a distribution of its securities from the time it determines to proceed with a shelf-registration of equity securities that meets the criteria of a distribution.[25] The Commission agrees with certain of the commentators on proposed Rule 462A, however, that issuers should not be subject to the strict prohibitions of Rule 10b–6 throughout the life of the shelf. Accordingly, as discussed more fully elsewhere in this release,[26] the Commission is proposing a new exception, analogous to the current Exception (xi), that would reduce the impact of the rule's strict prohibitions on issuers.

A broker-dealer that has a continuing agreement with the registrant to sell the securities registered on a shelf will be deemed to have commenced its participation at the time it reaches such an agreement. Since the arrangement in connection with a shelf-registered offering may last for a substantial length of time, the Commission is also proposing an amendment to Exception (xi) of the rule [27] to permit such broker-dealers to effect bids for or purchases of the securities that are the subject of the distribution until three business days before the commencement of any sale. The rule as revised will continue to apply to other broker-dealers who participate from time to time in the registrant's distribution in much the same way that it does currently. When a broker-dealer accepts an invitation to participate in the sale of securities that are registered on the shelf, the rule's prohibitions would not apply until the later of that time or three business days before commencement of any sales.

II. General Relaxation of Trading Restrictions

A. Exception (xi)

Exception (xi) currently permits underwriters, prospective underwriters and dealers who are participants in a distribution of securities to bid for or purchase the security which is the subject of the distribution until ten business days prior to the proposed commencement of such distribution (or five business days in the case of unsolicited purchases) provided that such bids and purchases are made otherwise than on a securities exchange. At the time of its adoption, this exception was designed to address the special liquidity problems caused by the operation of Rule 10b–6 in markets for unlisted over-the-counter securities during distributions of those securities.[28] When issuers whose securities are traded in the over-the-counter market decide to raise capital by engaging in a public offering of their securities, they typically select broker-dealers that make a market in their securities to act as underwriters. These market makers ordinarily constitute the principal market for the security, are knowledgeable about the security and generally are aware of the extent of investor interest in the security. Without the relief afforded by Exception (xi), however, each of these market makers would generally be prohibited from making a market in the security from the time it decided to accept an invitation to participate in the distribution. As a result, since this time often is far in advance of the actual commencement of selling efforts, the depth and liquidity of the market for the securities could be significantly reduced, which in turn might adversely affect the pricing of the issue.

In view of these significant concerns, the Commission believed at the time Rule 10b–6 was adopted that Exception (xi), in conjunction with the other exceptions to the rule, including Exception (viii), which permits stabilization not in violation of Rule 10b–7, constituted a suitable compromise between the Rule 10b–6 policy that distributions should be carried out free of the influence of any bids and purchases by participants and the need to preserve liquidity in the markets for unlisted over-the-counter securities that are the subject of distributions. At that time, ten business days was believed to be the time needed to ensure the elimination of participant influence.

Since the adoption of Rule 10b–6 in 1955, the securities markets have undergone significant change. In view of these changes and on the basis of the Commission's experience in administering the rule, the Commission now believes that Rule 10b–6 generally and Exception (xi) specifically may be more restrictive than necessary to accomplish the rule's purpose.

The application of Rule 10b–6 has also raised special concerns in the context of new Rule 415 that permits new kinds of "shelf" offerings by issuers and others.[29] Under Rule 10b–6, broker-dealers that have continuing agreements with the issuer to sell from time to time securities that are registered on the shelf would be deemed to be participants from the time they enter into such agreements until the earlier of the termination of the agreement or the completion of the sales which are covered by the agreement.[30] Such broker-dealers would therefore be subject to the prohibitions of Rule 10b–6 for a substantial period of time, and possibly, far in advance of their participation in any sales of the securities registered on the shelf. The restrictions on these broker-dealers for extended periods of time would have an adverse impact on liquidity in the markets for the securities that are the subject of the distribution. In addition, if broker-dealers were so strictly limited, issuers would not be able to take advantage of favorable market conditions in the manner envisioned by new Rule 415 in both the exchange and over-the-counter markets. In response to these problems, several commentators on the releases proposing Rule 462A for comment suggested that Rule 10b–6 be amended to address the problems of broker-dealers who had a continuing agreement with the issuer. Since the problems that are encountered under Rule 10b–6 by broker-dealers that participate in distributions involving a shelf offering are analogous to the problems that are perceived to exist with respect to Exception (xi), the Commission believes that these problems should be addressed at the same time.

In addition, the NASD recently proposed that the Commission replace current Exception (xi) with two new exceptions to Rule 10b–6.[31] The first would permit participants to make a market in the security that is the subject of a distribution until two business days before the commencement of the distribution and would permit such participants to make unsolicited purchases until the commencement of

as being engaged in a series of distributions rather than a single distribution. The underlying concern appeared to be that if the Commission took the single distribution position, it would significantly interfere with purchasing activity in the issuer's securities by participants in the distribution during periods when no sales were being made off the shelf. The commentators agreed with the Commission, however, that under either approach, a short cooling-off period would be appropriate between market purchases and sales off the shelf. This is the approach the Commission has taken in the proposed amendment to Exception (xi) and in proposed Exception (xii). *See* Section II., *infra.*

[25] *See* Section I.A., *supra.*

[26] *See* Section II.B., *supra.*

[27] *See* Section II.A., *supra.*

[28] The provisions of Rule 10b–6 do not give rise to similar liquidity problems in markets for exchange-traded securities. In the exchange markets, specialists continue to maintain markets in securities that become the subject of distributions for purposes of Rule 10b–6 even after the broker-dealers participating in the distributions are required to cease bidding for and purchasing the subject securities.

[29] *See* text & nn. 5–6, *supra.*

[30] *See* Section I.B., *supra.*

[31] *See* NASD Letter at 2–6.

the offering. The other exception would permit participants who are registered as market makers with the inter-dealer quotation system in which they propose to make stabilizing bids and purchases to engage in market-making during the two business days prior to the commencement of a firm commitment offering at a price not in excess of the highest independent bid for such security displayed in that system on the third business day prior to the commencement of the offering.

The Commission is proposing that current Exception (xi) be amended generally to reduce the ten business day cooling-off period to three business days for solicited purchases and to permit unsolicited purchases until the commencement of sales.[32] As amended, Exception (xi) no longer would distinguish between bids and purchases made on an exchange and those made in the over-the-counter market. It would permit bids and purchase of a security in distribution until three business days before the commencement of sales of the security both in the context of shelf-registered distributions contemplated by Rule 415 and in the context of traditional kinds of distributions. These proposed amendments, detailed below, are designed to accommodate the changes in the market that have taken place since the adoption of Rule 10b–6, and to facilitate the use of new techniques for distributing securities.

For several reasons, the Commission is not proposing to amend Rule 10b–6 at this time to permit limited market-making activity during the three day cooling-off period as suggested by the NASD. First, although the use of pre-effective stabilization has not developed in the past, the Commission believes that where the cooling-off period is as short as three days many of the problems previously encountered by syndicate managers contemplating pre-effective stabilization will be remedied.[33] In addition, to the extent that pre-effective stabilization generally becomes more feasible, it will become more practicable for members of syndicates in the over-the-counter market to make multiple stabilizing bids and purchases as permitted by Rule 10b–7(e), provided that the bids and purchases are made on behalf of the syndicate account as required by Rule 10b–7(e). Moreover, the Commission is concerned that to go beyond what is currently permissible under Rule 10b–7 during the very short cooling-off period being proposed today might result in uncoordinated stabilizing by members of the underwriting syndicate for their own account. Such activity might ultimately cause disruption in the capital markets and in fact compromise the independence of the market as a pricing mechanism. Commentators, however, are invited to address this point specifically.

1. *Three day cooling-off period.* The Commission is proposing to amend Exception (xi) to permit underwriters, prospective underwriters or dealers to make bids or purchases of the security being distributed (and the other securities covered by the rule) up until three business days before the commencement of an offering, and to eliminate the current distinction between exchange and over-the-counter transactions for purposes of Exception (xi). Although Exception (xi) was originally prompted by a need to assure continued liquidity in the over-the-counter markets to the extent consistent with the rule's purposes, the Commission believes that the ten day cooling-off period that it imposes is unnecessarily long. In view of the speed with which information is disseminated in today's market place, the Commission believes that a three day cooling-off period, at least with respect to certain securities, generally should be sufficient to dissipate the market impact of a participating broker-dealer's purchases prior to the commencement of sales. Although this amendment would appreciably reduce the cooling-off period, the Commission does not believe that the amendment should sacrifice the integrity of the markets. Together with the general antifraud and anti-manipulative provisions of the federal securities laws, particularly section 9(a)(2) and section 10(b) and Rule 10b–5 thereunder, Rule 10b–6 should continue to provide sufficient investor protection. The Commission has some concern, however, that the potential for manipulative abuse may be greater in the context of distributions of securities conducted on behalf of issuers that are required to use new Form S–1 under the Securities Act of 1933 which the Commission has adopted as part of its integrated disclosure system.[34] The market for these securities may be less stable relative to the markets for securities of issuers that are qualified to use Forms S–2, or S–3. In addition, issuers required to use Form S–1 will not have extensive reporting histories and there will be less publicly-available information concerning such issuers. For these reasons, the Commission solicits comment on whether it would be appropriate to provide for a longer cooling-off period in Exception (xi) in the context of distributions of certain securities, such as securities of an issuer qualified only to use Form S–1, or whether it would be appropriate to consider other criteria in determining the appropriate length of the cooling-off period such as the depth and liquidity of the market for the subject security.

The Commission also is reconsidering whether Exception (xi) should continue to be available solely for over-the-counter transactions. Although such a limitation would be consistent with the original limited purpose of the exception, Rule 415 will permit shelf-registered distributions in both the exchange and over-the-counter markets. As a result, a broker-dealer that has a continuing agreement with an issuer relating to such an offering may be a participant in a distribution, for purposes of Rule 10b–6, for extensive periods of time, irrespective of whether the security in distribution is traded over-the-counter or on an exchange. Because of the quality of available information regarding exchange-traded securities, including last sale information, there appears to be no reason in this context to continue to distinguish participants' purchasing transactions on the basis of whether they are effected in the over-the-counter market market or on an exchange. Moreover, since the only distinction between delayed offerings of securities made pursuant to Rule 415 and other more conventional registered offerings is the fact of shelf-registration and not the distribution mechanisms that will be used. Accordingly, the Commission is proposing to amend Exception (xi) to make it available in all distributions.[35]

2. *Broker-dealers.* If Exception (xi) is amended as proposed, it will permit broker-dealers to bid for or purchase a security in distribution until the later of three business days before the commencement of sales or such other time as they become participants. A broker-dealer that has a continuing

[32] The Commission does not believe that unsolicited purchases by participants as principal prior to the commencement of sales generally present the potential for manipulative abuse to which Rule 10b–6 is addressed.

[33] Pre-effective stabilization has not developed in the past, at least in part, because an underwriting syndicate often was not established ten days before an offering was due to commence. In addition, even if the syndicate were formed at that time stabilizing for ten days would involve placing a significant amount of capital at risk. Moreover, uncertainty may exist ten days before the proposed commencement of an offering as to whether the offering will go forward at all.

[34] *See* note 6, *supra.*

[35] Offerings made pursuant to Rule 415 may be effected through a variety of distribution mechanisms, including fixed priced underwritings, best efforts offerings and, if the issuer qualifies for the use of Form S–3, through brokerage transactions.

agreement with an issuer regarding a shelf distribution would be required to be out of the market three full business days prior to the commencement of any sales of that security in which it participates. Other broker-dealers that participate in sales off the shelf on a more limited basis would be required to be out of the market from the later of three business days before the commencement of sales or the time they agree to participate in sales.[36] The Commission believes that the implementation of this proposed amendment would strike an appropriate balance between the Commission's interest in protecting investors and its interest in permitting issuers to proceed with Rule 415 offerings on a temporary basis.

In order to facilitate the participation of broker-dealers in shelf distributions by issuers, and to reduce the perceived liquidity problems in the over-the-counter market, the staff will not recommend that the Commission take enforcement action under Rule 10b–6 if broker-dealers participating in distributions subject to Rule 10b–6 that are conducted on behalf of issuers or other persons where the issuer is qualified to use new Forms S–2 or S–3 under the Securities Act, conform their trading activity to the proposed amendments from and after the date of this release until the Commission takes final action on these proposals.[37] For the reasons discussed earlier in this release,[38] the staff does not believe that it would be appropriate to extend this interim no-action position in the context of distributions of securities of issuers that are qualified only to use Form S–1.

B. Proposed Exception (xii)

Underlying Rule 10b–6 has been the policy that it is inappropriate for issuers or other persons on whose behalf the distribution is being made ("selling shareholders"), and affiliates of issuers, to purchase the securities of the issuer at times when the securities are the subject of a distribution. These persons may have the incentive to bid up the price of these securities in order to facilitate their sales. Thus, issuers, selling shareholders and their affiliates have been prohibited from bidding for and purchasing such securities from the time they determine to go forward with an offering of their securities which constitutes a distribution until the distribution is completed.

The Commission believes that these prohibitions may be overly restrictive, and is proposing to relax the rule as it applies to issuers and selling shareholders, and to limit coverage of the rule to affiliated purchasers of issuers and selling shareholders, as defined in new paragraph (c)(6) of the rule. An affiliated purchaser would be defined as a person acting in concert with the issuer or other person for the purpose of acquiring the issuer's securities, or an affiliate who, directly or indirectly, controls the issuer's or other person's purchases of such securities, whose purchases are controlled by the issuer or such other person or whose purchases are under common control with those of the issuer or such other person. This definition is a modified form of the term "affiliated purchaser" contained in proposed Rule 13e–2 under the Act.[39] This amendment reflects the view that purchases by affiliates who are acting in concert with the issuer or who control the issuer's purchasing determinations may present more potential for manipulative activity than purchases by other affiliates.

The proposed exception, to be denominated Exception (xii), would permit issuers, selling shareholders or their affiliated purchasers to bid for or purchase the security that is the subject of the distribution and certain related securities[40] until three business days prior to any sales of the securities. Within the three day cooling-off period and thereafter until the completion of the distribution, Rule 10b–6 would prohibit solicited and unsolicited bids for our purchases of the security in distribution and related securities by issuers, selling shareholders and their affiliated purchasers.

Issuers, selling shareholders and their affiliated purchasers may, however, have a special interest in facilitating distributions of their securities. The Commission solicits comment on whether it would be appropriate to distinguish between purchasers and bids made by these persons and those made by broker-dealers and, if so, whether it would be appropriate to impose additional conditions on purchases by these persons, such as imposing a cooling-off period that is longer than three business days.

Because of the special problems that might otherwise arise for issuers engaged in shelf-offerings pursuant to Rule 415, the staff will not recommend that the Commission take enforcement action under Rule 10b–6 if issuers, selling shareholders and their affiliated purchasers rely on proposed Exception (xii) in connection with their purchasing

[36] A determination of the time at which a broker-dealer who is only named in a shelf-registration statement (as opposed to a broker-dealer who has a continuing agreement with the issuer) will be deemed a participant in the issuer's distribution will depend on the facts and circumstances surrounding the broker-dealer's relationship with the issuer and its relationship with other broker-dealers acting on the issuer's behalf. Absent some agreement with the issuer relating to its participation, the Commission does not believe that a broker-dealer should necessarily be deemed to be a participant solely because it is identified in the registration statement as a possible underwriter, particularly if it has not consented to being named. Nevertheless, a broker-dealer that is named as an underwriter in the registration statement would be subject to the three day cooling-off period in connection with any offers and sales in which it acts as underwriter.

One commentator noted that, in the context of at the market offerings contemplated by Rule 415, issuers may decide to sell shares into the exchange markets in normal brokerage transactions effected through its managing underwriter as agent for the issuer. The issuer's managing underwriter may on occasion use a "two-dollar" broker to effect transactions on the exchange. The commentator suggested that the two-dollar broker should not be deemed to be a participant in the distribution by the issuer, as the managing underwriter would be. The Commission believes that a two-dollar broker performing its normal broker functions should not be deemed to be a participant in such distribution absent special arrangements with the issuer or its managing underwriter.

In addition, the Commission reaffirms its position that market professionals who acquire securities directly from the issuer, or from broker-dealers acting for the issuer, for purposes of Rule 10b–6, are not deemed to be involved in a distribution by the issuer if such securities were acquired in the ordinary course of their business and they were not paid any special compensation and had not made any special arrangements with the issuer or its broker. *See* Securities Act Release No. 6334, 46 FR at 42012–3.

[37] This interim no-action position will not, however, be available with respect to the exercise of exchange-traded call options by participants in a distribution of the security underlying such options. As the Commission noted in Securities Exchange Act Release No. 17609 (March 6, 1981), purchases of stock in response to the exercise of exchange-traded options may have significant impact in the market for a security in distribution. Thus, the Commission has taken the position that the exercise of these options is not excepted from Rule 10b–6 under Exception (vii) to the rule and is proposing to codify that position. *See* Section III.D., *infra*. The Commission believes, however, that the prohibitions of Rule 10b–6 should also be amended in this context. Since the market impact occurs after the exercise of the option, it appears that it may be appropriate to subject the exercise of the option to a cooling-off period in excess of three business days. The Commission requests comment on the latest time before commencement of sales in a distribution of the underlying stock that persons subject to Rule 10b–6 should be permitted to exercise exchange-traded call options.

[38] See text and n. 34, *supra*.

[39] *See* Securities Exchange Act Release No. 17222 (October 17, 1980) 45 FR 70890 (1980).

[40] The exception would permit the covered persons to bid for and purchase a security of the same class and series as the security in distribution or any right to purchase such security as provided for in paragraph (a) of Rule 10b–6. In addition, paragraph (b) of Rule 10b–6 provides that when convertibles, warrants or options are the subject of distributions, the securities underlying these securities are also placed in distribution. Proposed Exception (xii) would permit the covered persons to purchase the convertibles, warrants or options and the securities underlying them until three business days before the commencement of sales of these securities.

activity in the context of a distribution involving a shelf-registered offering, from and after the effective date of Rule 415 until the Commission takes final action on these proposals, provided that the issuer is qualified to use Forms S–2 or S–3 under the Securities Act.[41] Since this is a major departure from the present application of Rule 10b–6 in this area, however, the staff will not take this interim no-action position with respect to bids or purchases by these persons during a distribution of securities not effected pursuant to Rule 415.

C. Issuer Repurchases During Distributions Resulting From Mergers

Proposed Exception (xii) is intended to address the issue of repurchases by issuers during distributions, at least in the context of public offerings. Issuer repurchases during distributions pursuant to mergers and other acquisitions, however, may raise different concerns.

The issuance of securities pursuant to a merger in many cases constitutes a distribution for purposes of Rule 10b–6. If the merger does constitute a distribution, it has been deemed to commence at least from the time the issuer reaches an agreement in principle with respect to the merger. Accordingly, subsequent to that time, an issuer may not purchase shares of the security being distributed in connection with the merger (and the other securities covered by Rule 10b–6) unless specifically exempted from or excepted by Rule 10b–6. Under such circumstances, the staff routinely has granted exemptions to permit issuers and their affiliates to purchase shares of the security being distributed in the merger until the earlier of thirty days prior to the shareholder vote on the merger or five business days prior to the mailing of the proxy materials in connection with the merger. In addition, if there are periods during which the market price of the offered security will be a factor in determining the consideration to be paid pursuant to the merger ("valuation period"), the exemption has required the issuer to cease bidding for and purchasing the security five business days prior to and for the duration of any such period.

In light of the new proposed Exception (xii), and the rationale underlying it, the Commission believes that it may be appropriate to reduce the five business day cooling-off period to three business days before the mailing of proxy solicitation materials and prior to valuation periods. The Commission believes that it may be appropriate to codify these positions regarding issuer repurchases during merger distributions if Exception (xii) is adopted in order to eliminate the *ad hoc* exemptive process. During the pendency of these proposals, however, the Commission will continue to grant exemptions on a case-by-case basis to permit purchases during the kinds of distributions discussed above. The Commission solicits comments on the specific proposed changes in the positions concerning issuer repurchases during merger distributions. In addition, the Commission solicits comments on whether an amendment to the rule or an interpretive release discussing the positions outlined above would be more appropriate.

III. Other Amendments to Rule 10b–6

A. Exception (ii)

Exception (ii) to the rule excepts "unsolicited privately negotiated purchases, each involving a substantial amount of such security, effected neither on an exchange nor from or through a broker or dealer." The exception was drafted in response to industry comments made when the rule was under consideration concerning the need to permit the underwriters to purchase, in unsolicited transactions, blocks of securities "overhanging" the market prior to or during a distribution. The provisions of Exception (ii), however, not only permit purchases by underwriters but also allow those purchases to be effected by the issuer, selling shareholders and other participants in a distribution.

Purchases made in reliance on Exception (ii) must not be effected on an exchange. Because exchange last sale tickers afforded publicity to transactions effected on an exchange, it was believed that substantial purchases by persons interested in a distribution could have significant market impact and should not be excepted. Transactions effected in the over-the-counter market or otherwise off an exchange, however, did not raise those concerns since they generally were not publicly disseminated.

In 1972 the Commission adopted Rule 17a–15 [§ 240. 17a–15] under the Act requiring every registered national securities exchange, every national securities association and every broker-dealer not a member of an exchange or association who effected transactions in exchange-traded securities which were not reported by an exchange or association to file with the Commission a plan providing for the collection, processing and dissemination of last sale reports in securities registered or admitted to unlisted trading privileges on an exchange. Rule 17a–15 was subsequently amended and redesignated Rule 11Aa3–1 [§ 240.11Aa3–1]. The joint industry plan filed pursuant to Rule 17a–15 and declared effective by the Commission in May, 1974 requires that all trades in certain exchange-traded securities ("reported securities") wherever effected, be publicly disseminated through the consolidated transaction reporting system ("consolidated system"). Thus, third market trades of reported securities are now included in the consolidated system and are publicized in the same manner as exchange trades. In view of the fact that all transactions in reported securities, whether effected on an exchange or over-the-counter, are now reported in the consolidated system, the staff for some time has interpreted the exception to permit purchases that otherwise qualify under the exception to be effected on an exchange. In its view, the need for the exception has outweighed the potential for manipulative abuse. The Commission is proposing to codify this position. Because of the changes in the reporting system implemented as a result of the implementation of the consolidated system, it is the Commission's belief that the disparate treatment given exchange and over-the-counter transactions that is reflected in Exception (ii) is no longer necessary or justified.

The Commission believes that deleting the requirement that transactions effected in reliance on the exception not be made on an exchange will not increase the opportunity for abuse. Transactions effected in reliance on the exception must be "privately negotiated," and "unsolicited" and not made from or through a broker or dealer.[42] The Commission believes that these requirements are sufficient to preclude the use of Exception (ii) in any systematic scheme to manipulate the price of a security. Accordingly, the Commission proposes to amend Exception (ii) by deleting the requirement that purchases not be effected on an exchange, and by codifying the position that the term "substantial amount," for purposes of the exception, means a block of such security. At such time as final action is taken on these proposals, the Commission intends to codify the staff's position that the term block for purposes

[41] *See* text and n. 34, *supra.*

[42] The staff interprets the phrase "from or through a broker or dealer" to disqualify a broker or a dealer from participating on the "sell" side of a transaction. However, the exception obviously permits a broker-dealer on the "buy" side of the transaction.

of Exception (ii) has the same meaning as the term block in paragraph (a)(16)(B) of proposed Rule 13e–2 under the Act.[43]

B. Exception (iii)

Exception (iii) to the rule provides that purchases by an issuer that are effected more than forty days after the commencement of a distribution for the purpose of satisfying a sinking fund or similar obligation to which the issuer is subject,[44] are not prohibited by the rule. The exception is available only when the issuer effects purchases to satisfy this sinking fund obligation and does not apply to situations in which purchases of the debt security are made for other purposes.[45] Exception (iii) is intended to permit the issuer to fulfill its obligation to satisfy the mandatory sinking fund provisions of the debt instrument. In addition, because the issuer is obligated to purchase pursuant to the sinking fund provisions, it is highly unlikely that those purchases will be effected for the purpose of manipulating the market for the subject security.

Both the purpose of the exception and its formulation imply that Exception (iii) was intended solely to permit satisfaction of sinking fund obligations that are mandatory. Indeed, that has been the staff's interpretation of the exception. Furthermore, although not currently articulated in the rule, the staff's position has been that, in order for an issuer to avail itself of the provisions of Exception (iii) purchases may be made only to satisfy mandatory sinking fund obligations that become due within 12 months of the date of purchase. When the issuer purchases to satisfy sinking fund obligations that become due in the more distant future, the issuer's obligation may no longer outweigh the manipulative potential of such purchases. Thus, the Commission is proposing an amendment to Exception (iii) that will permit an issuer to effect purchases to satisfy sinking fund obligations that are both mandatory and current.

C. Exception (iv)

The Commission is proposing for public comment certain amendments to Exception (iv) to Rule 10b–6. Exception (iv) currently provides that Rule 10b–6 shall not prohibit "odd-lot transactions (and the offsetting round-lot transactions hereinafter referred to) by a person registered as an odd-lot dealer in such security on a national securities exchange who offsets such odd-lot transactions in such security by round-lot transactions as promptly as possible."

Today, there do not remain any registered odd-lot dealers on the national securities exchanges, and the function formerly performed by such dealers is now performed by exchange specialists and other broker-dealers. Accordingly, the Commission proposes to amend Exception (iv) to Rule 10b–6. As amended, Exception (iv) would continue to except from Rule 10b–6 the function formerly performed by registered odd-lot dealers by excepting all "odd-lot transactions and the round-lot transactions associated therewith by a person who acts in a dealer capacity in effecting odd-lot transactions." This exception would recognize that such odd-lot transactions and the accompanying round-lot transactions do not ordinarily raise manipulative concerns that require the absolute bar of Rule 10b–6. The associated round-lot transactions may precede as well as follow the odd-lot transactions that they offset. For the above reasons, the Commission is also proposing corresponding changes in Rules 10b–8(a)(2) and 10a–1(e)(3)–(4).

D. Exception (vii)

Exception (vii) to the rule provides an exception for "the exercise of any right or conversion privilege to acquire any security." This exception is intended to permit transactions involving the exercise or conversion of an issuer's security where the new security is obtained directly from the issuer. Such transactions do not involve any market impact and are thus not subject to the concerns at which Rule 10b–6 is directed.

Recently, the Commission's staff declined to take a "no-action" position to allow the exercise of exchange-traded call options by participants in a distribution of the underlying securities,[46] since such exercises may have a significant market impact on the underlying security.[47]

This position appears consistent with the purpose of Rule 10b–6 and Exception (vii), which were drafted before the advent of exchange-traded options. Accordingly, the Commission, is proposing to amend Exception (vii) by adding the words "directly from the issuer" at the end of the exception.

E. Overallotment Options

In connection with a firm commitment public offering, the underwriters may create a syndicate short position by selling more than the maximum number of securities they have to distribute, *i.e.*, they will oversell the offering.[48] One of the primary purposes for this practice is to anticipate customer cancellations.[49] In order to cover the syndicate short position, the managing underwriters

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[43] Paragraph (a)(16)(B) of proposed Rule 13e–2 would define the term block as a quantity of stock that either

(i) Has a purchase price of $200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate.

See Securities Exchange Act Release No. 17222 (October 17, 1980), 45 FR 70890 (1980).

[44] A sinking fund is a reserve of capital that is set aside on an annual basis out of current earnings, for the purpose of providing funds to retire a given bond issue or debt security, in whole or part, prior to its maturity date. The fund is usually controlled by a trustee and may be composed of cash or securities (generally the bonds or other debt security being retired). Payments to the fund are made periodically by the issuer of the subject security and may be in the form of the bonds or debt securities themselves purchased in the open market or called at a price stated in the instrument or cash deposits. The purpose of having a sinking fund is both to protect the debt instrument and to reduce the amount of the issue outstanding and therefore make it easier to repay the balance at maturity. F. Thompson & R. Norguard, *Sinking Funds Their Use and Value* (1967).

[45] *See* no-action letter issued to Glen Alden Corporation, Schenley Industries, Inc. (Feb. 17, 1972).

[46] The amendments to Exception (xi) that the Commission is proposing today would permit the exercise of exchange-traded call options by participants in a distribution of the underlying securities until three business days before the commencement of the distribution. *But see* note 37, *supra*.

[47] *See* Securities Exchange Act Release No. 17609 (March 6, 1981). In that release, the Commission recognized that the degree of market impact depended upon the extent to which those who are assigned exercise notices purchase the underlying stock in the open market, rather than deliver portfolio or borrowed securities.

[48] It is the staff's position that overallotment options are appropriate only in a firm commitment offering in which the underwriter purchases the securities from the issuer or other person on whose behalf the offering is made before it commences sales to the public. The underwriter hence is subject to market risk. In a "best efforts" offering, however, the underwriter has no capital at risk, but acts merely as agent for the seller. Under these circumstances, the underwriter receives compensation from the seller on the basis of the amount of securities actually sold.

[49] Another reason for underwriters to overallot is to create buying power to support the market price so as to facilitate the distribution of securities. As early as 1943, the Director of the Commission's Trading and Exchange Division expressed the view that purchases made to cover overallotments may facilitate the distribution of securities.

* * * A syndicate overallotment is customarily made for the purpose of facilitating the orderly distribution of the offered securities by creating buying power which can be used for the purpose of supporting the market price. Thus, it would appear, in the absence of circumstances indicating the contrary, that purchases made for the purpose of covering the "short position" of the syndicate are effected for the purpose of facilitating the distribution. Securities Exchange Act Release No. 3506 (November 16, 1943).

may negotiate with the issuer to obtain an overallotment option, also known as a Green Shoe option. The option enables the underwriters to require that the issuer sell a specified additional amount of securities which may be used to cover the short position.

Paragraph (c)(3)(B) of Rule 10b–6 specifies the conditions under which an underwriter shall be deemed to have completed its participation in a distribution. The rule provides that an underwriter has completed its participation in distribution when its alloted securities have been distributed and all stabilization arrangements or trading restrictions among underwriters, to which it is a party, have been terminated.[50] It has been the staff's position that, for purposes of the rule, a distribution in connection with a public offering has not been completed until any overallotment option granted in connection with the distribution has been either exercised or cancelled.[51] The rule in its present form does not specifically refer to the effect of an overallotment option on the termination of a distribution of securities. The position is appropriate, however, because securities made available by a seller to an underwriter pursuant to an overallotment option do not constitute a distinct or separate category or class, but are merely additional to the maximum amount of the offered securities and have been sold as such by the underwriter.[52]

Because sales of the securities subject to the overallotment option are made in connection with the distribution of such securities by the underwriter, the underwriter is not deemed to have completed its participation in the distribution until any overallotment option is either exercised or cancelled. The Commission is proposing to codify this requirement in paragraph (c)(3)(B) of the rule.

[50] The purpose of the provision is to permit an underwriter participating in a distribution to determine when it is free from the prohibitions of the rule, allowing it to resume normal operations.

[51] An underwriter with an overallotment option is required to cancel its option prior to purchasing in the open market. If open market purchases are made before the option is exercised, the staff's position is that the option, at that point, has been cancelled. If the underwriter were to exercise the option after making some open market covering purchases (because the market price rises above the option exercise price before the syndicate short position is covered), these market purchases would violate the rule since they had been made before the completion of the distribution (*i.e.*, prior to the cancellation of the option).

[52] Individuals purchasing overalloted securities must receive a prospectus and the shares sold are subject to the underwriting discount.

F. Exception (xiii)

The Commission is proposing for public comment a new exception to Rule 10b–6 that would allow persons subject to the rule to purchase certain investment grade debt securities of an issuer during a distribution of other debt securities of the same class and series of that issuer.

In a no-action letter concerning American Telephone and Telegraph Company ("AT&T") dated February 26, 1975, the staff, with the Commission's concurrence, granted no-action relief to permit the purchase of debt securities of the same class and series as those being distributed if the following conditions were met: (1) the issuer must be subject to the regular reporting requirements of Section 13 or Section 15(d) or the security being purchased must be registered with the Commission pursuant to Section 12(b); (2) the securities being distributed and the securities being purchased must be non-convertible debt securities with fixed interest rates; (3) both the securities being distributed and the securities being purchased must be rated "BBB" or better by Standard and Poor's Corporation and "Baa" or better by Moody's Investor Service, Inc.; and (4) the total outstanding public debt of the issuer must aggregate $100 million or more in face amount.

The Commission is proposing to codify the interpretive position taken in the AT&T letter as new Exception (xiii) to Rule 10b–6, modified to the extent set forth below. This position has been adhered to by the staff since 1975, and is predicated on the belief that it is very difficult, if not impossible, to manipulate the price of investment grade debt. Investment grade debt securities are generally thought to trade in accordance with a concept of relative value, *i.e.*, such securities are to a large degree fungible, so that investors generally evaluate new offerings by looking at comparably rated securities of other issuers. Debt securities that are not of investment grade may pose a greater potential manipulative threat, since those securities tend not to be fungible. Investors are therefore more likely to compare yields of new non-investment grade debt offerings with those of outstanding debt securities of the same issuer.

The Commission is proposing to include as a condition to Exception (xiii) the requirement set forth in the AT&T letter that the issuer be subject to the regular reporting requirements of section 13 or section 15(d) or the security being purchased must be registered with the Commission pursuant to section 12(b). The Commission solicits comment on whether this condition is necessary.

The AT&T letter required that the securities being distributed and the securities being purchased have fixed interest rates. There does not appear to be any basis for excluding from the exception the increasing number of floating rate securities whose interest rates are tied to a benchmark, such as the prime rate or the yield on certain government securities. Accordingly, proposed Exception (xiii) does not contain this condition.

The AT&T letter required that both the securities being distributed and the securities being purchased be rated "BBB" or better by Standard & Poor's Corporation and "Baa" or better by Moody's Investor Service, Inc. In recognition of the fact that other rating organizations have been or may be recognized as "nationally recognized statistical rating organizations" for purposes of Rule 15c3–1(1)(2)(vi)(F) under the Act, relating to the treatment of non-convertible debt securities for net capital purposes, the Commission proposes that this condition be slightly modified to require only that both the debt securities being distributed and those being purchased be rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations.

The fourth criterion for no-action relief set forth in the AT&T letter—that the outstanding public debt of an issuer must aggregate $100 million or more in face amount—is to some degree inconsistent with the concept that investment grade debt securities trade on the basis of their relative values and financial ratings, but may provide some additional assurance that manipulation of those securities would not be practicable. It appears that the aggregate outstanding public debt requirement does not, however, necessarily achieve the result intended. For example, an issuer may have more than $100 million in outstanding public debt, but less than $1 million outstanding of a particular issue that may be the only one comparable to the security being distributed. Moreover, even a large aggregate amount of outstanding public debt does not ensure the liquidity that makes manipulation difficult, since the debt securities may be held by a very few institutional investors.

Although the Commission is proposing to include the $100 million criterion as a condition to Exception (xiii), comment is solicited on whether this or any other quantity criterion is necessary to achieve the purposes of Rule 10b–6.

Commentators are also invited to suggest an appropriate alternative formulation, perhaps one that combines a lower level of aggregate outstanding public debt with additional criteria responding to the concerns expressed herein.

Since some issuers may desire to use Rule 415 to shelf-register offerings of debt securities immediately after that rule becomes effective, the staff will not recommend that the Commission take enforcement action under Rule 10b–6 if issuers and other participants in a distribution of debt securities make purchases of other classes of debt securities if all of the conditions of proposed Exception (xiii) are met.

In the case of debt securities that do not come within the parameters of proposed Exception (xiii), the staff intends to adhere to the position taken in a no-action letter dated January 11, 1974 concerning Gamble-Skogmo, Inc. In that letter, the staff took the position that outstanding debt securities of an issuer that varied by at least one percent in the coupon interest rate and by at least ten years in the maturity date from those of the debt securities being distributed would not be deemed to be of the "same class and series."

Although the *Gamble-Skogmo* no-action position is not being codified, comments are specifically solicited with regard to whether the staff should modify its position in light of the amendments to Rule 10b–6 being proposed and recent changes in the bond markets, including the dramatic increase in interest rates since 1974[53] and the trend to shorter bond terms.

G. Amendment to Rule 10b–8

When it issues a series of redeemable convertible debentures or redeemable convertible preferred stock (collectively, the "Convertibles"), a company may reserve the right to redeem those securities and generally will commit itself to do so, if at all, at a price that represents a slight premium over the face value of the Convertible.[54] Once an issuer determines to redeem a series of convertible securities and a redemption notice has been issued, holders of the Convertible generally have some period of time ("Redemption Period") during which to make their investment decision. During the Redemption Period, as long as the market price of the underlying security remains substantially above the price at which the Convertible may be converted,[55] holder of Convertibles can be expected to convert them into shares of the underlying security, rather than allow them to be redeemed by the issuer.[56]

Should the market price of the underlying security decline significantly during the Redemption Period, however,[57] holders of Convertibles may find it more profitable to permit the issuer to redeem their securities than to convert them.[58] An issuer, therefore, frequently will enter into an agreement with an underwriter pursuant to which the underwriter will agree to make an offer to purchase Convertibles tendered to it by holders ("Standby Offer"), to convert all such securities into common stock,[59] and thereafter to sell the common stock.[60] The underwriter also will agree to purchase from the issuer, and to resell, the common stock underlying any Convertibles that the issuer actually redeems.

In order to reduce its own exposure to market fluctuations, the underwriter may employ a strategy that is designed to minimize the risk that the underwriter will find itself, at the conclusion of the Redemption Period, holding large amounts of the issuer's common stock. Pursuant to this strategy, the underwriter will sell short shares of the common stock. It may purchase Convertibles, either in the market or pursuant to the Standby Offer and convert them into common stock, as it is obligated to do under the terms of its agreement with the issuer. Finally, the underwriter uses that stock to cover its short position or sells it directly pursuant to a Securities Act registration statement.[61] This strategy is analogous to that employed in connection with "Shields Plan" pro rata rights offerings.[62]

The agreement of the underwriter to participate in the offering of the common stock obtained upon conversion of the Convertibles marks the commencement of its participation in a distribution for purposes of Rule 10b–6. Rule 10b–6 prohibits a participant from bidding for or purchasing the security in distribution, any security that is convertible into or exchangeable for that security or any right to purchase any such security (including the security being redeemed), unless the bid or purchase is excepted by or exempted from the rule.[63]

Rule 10b–6(a)(3)(ix) ("Exception ix") permits participants in a distribution of securities offered through rights issued on a pro rata basis to bid for or purchase those rights in compliance with certain conditions set forth in Rule 10b–8 under the Act.[64] Convertibles, although they generally would be deemed to be "rights to purchase" the underlying common stock in the context of a redemption call by an issuer, are not "rights issued on a pro rata basis," purchases of which are specifically addressed by Rule 10b–8 and Exception (ix). An underwriter therefore must request a written exemption from Rule 10b–6 each time a standby agreement is signed in connection with an issuer's redemption of a series of convertible securities. Because purchases of Convertibles and purchases during rights offerings are both made pursuant to the "Shields Plan" strategy described above, the staff since 1973 has routinely granted these exemption requests, subject to the condition that purchases of Convertibles in the market and all sales of common stock are effected in compliance with Rule 10b–8 as if the

[53] For example, a 2% difference in coupon rates when prevailing interest rates are 15% may be less significant to an investor comparing two debt securities in making an investment decision than a 1% difference was thought to be when prevailing interest rates were 6%.

[54] The redemption price of a Convertible is specified in the indenture or other similar document under which the Convertible was issued. The redemption price of a convertible debenture is stated as a percentage of the face value of the security, while that of convertible preferred stock generally is stated as a specified dollar amount.

[55] When the market price of the common stock equals or exceeds the conversion price, the Convertible is said to be "in-the-money."

[56] For this reason, redemptions under such circumstances are frequently referred to as "forced conversions" or "forced calls."

[57] The Redemption Period is usually approximately 30 days.

[58] The risk that large amount of Convertibles will be redeemed by holders increases as the spread between the market price and the Conversion Price narrows and is especially great during periods when market conditions are volatile.

[59] Although Convertibles are most often convertible into the issuer's common stock, they also may on occasion be exchangeable for shares of preferred stock. *See, e.g., Lehman Brothers Kuhn Loeb, Inc.* (November 25, 1980).

[60] Although the underwriter's transactions would generally be subject to the short swing trading restrictions of Section 16 under the Act, Rule 16b–2(a)(1) excepts transactions by a person who is "engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution * * *" 17 CFR § 240.16b–2(a)(1).

[61] In addition, the underwriter may engage in stabilizing transactions with respect to the issuer's common stock, which must be conducted in compliance with Rule 10b–7 under the Act.

[62] Shields Plans were developed for use in connection with rights offerings conducted in compliance with Rules 10b–8 under the Act.

[63] Section 240.10b–6(a)(3). Convertibles are deemed by the staff to constitute a "right to purchase" the underlying security for purposes of Rule 10b–6 when it is economically beneficial for the holder of the Convertible to convert it, *i.e.*, when the Convertible would likely be used as a means of obtaining the underlying security. That situation arises whenever the relative prices of the Convertible and the underlying security are such that there is a reasonable expectation that significant amounts of Convertibles will be converted. Such conversions may act to facilitate the distribution of the underlying security.

[64] Section 240.10b–8(d) (A) through (G).

Convertibles were "rights issued on a pro rata basis to security holders."[65]

Because standby redemptions of Convertibles conducted in compliance with the pertinent provisions of Rule 10b–8 appear to present little potential for manipulative abuse, the Commission proposes to amend Rule 10b–8 so that it applies directly to purchases by underwriters of convertible securities in connection with calls for redemptions of such by the issuers thereof. Such purchases then would be specifically excepted from the scope of Rule 10b–6 pursuant to Exception ix.

IV. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes new procedural steps applicable to agency rulemaking which has a "significantly economic impact on a substantial number of small entities."[66] The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that the proposed amendments to Rules 10b–6, 10b–8 and 10a–1, if adopted, will not have a significant economic impact on a substantial number of small entities, or any other entities, because the amendments would alleviate the burdens that the Rules presently impose on issuers and certain broker-dealers, and the amendment to Rule 10b–8 would eliminate a layer of regulation imposed in connection with "redemption standby" transactions. Specifically, the amendments to Rule 10b–6 would increase the time period in which broker-dealers can engage in purchasing activity prior to the commencement of a distribution, and would for the first time permit issuers and certain affiliates to bid for or purchase securities that are the subject of a distribution for a certain period prior to the commencement of the offering. The amendment to Rule 10b–8 would have the effect of exempting from regulation under Rule 10b–6 purchases of certain convertible securities made in compliance with Rule 10b–8.

V. Statutory Basis

The proposed amendments to Rule 10b–6 would be adopted under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 10(a), 10(b), 13(e), 15(c) and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78m(e), 78o(c) and 78w(a).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES AND EXCHANGE ACT OF 1934

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

Note.—The text of the following proposed amendments uses ► arrows to indicate additions and [ ] brackets to indicate deletions:

1. By revising § 240.10a–1(e) (3) and (4) as follows:

§240.10a–1 Short sales

* * * * *

(e) * * *

(3) any sale [by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker] ►by a person who acts in a dealer capacity in effecting odd-lot transactions◄ to offset odd-lot orders of customers; (4) any sale [by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker] ►by a person who acts in a dealer capacity in effecting odd-lot transactions◄ to liquidate a long position which is less than a round-lot, provided such sale does not change the position of such [odd-lot] dealer [or such market maker] by more than one unit of trading;

* * * * *

2. By amending § 240.10b–6 and by revising (a)(2), (3) (ii), (iii), (iv), (vii), and (xi), and (c)(3)(i), and adding (a)(3) (xii), and (xiii), and (c) (5), and (6) as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

(a) * * *

(2) who is the issuer or other person on whose behalf such a distribution is being made, or ►who is an affiliated purchaser, as that term is defined in paragraph (c)(6) of this Rule, of such issuer or other person, or◄

(3) * * *

(ii) unsolicited privately negotiated purchases, each involving [a substantial amount of such security,] ►at least a block of such security◄ [effected neither on a securities exchange nor] ►that are not effected◄ from or through a broker or dealer; or

(iii) purchases by an issuer effected more than forty days after the commencement of the distribution for the purpose of satisfying a sinking fund or similar obligation to which it is subject ►which becomes due as of a date that does not exceed twelve months from the date of purchase;◄

(iv) odd-lot transactions [(] and the [offsetting] round-lot transactions [hereinafter referred to)] ►associated therewith◄ by a person [registered as an odd-lot dealer in such security on a national securities exchange who offsets such odd-lot transactions in such security by round-lot transactions as promptly as possible] ►who acts in a dealer capacity in effecting all-lot transactions;◄

* * * * *

(vii) the exercise of any right or conversion privilege to acquire any security ► directly from the issuer; or◄

* * * * *

(xi) [purchases or bids] ►bids or purchases◄ by an underwriter, prospective underwriter or dealer [otherwise than on a securities exchange, 10 or more business days prior to the proposed commencement of such distribution [or 5 or more business days in the case of unsolicited purchases] ►made prior to the later of (A) 3 business days before the commencement of offers or sales of the securities to be distributed [or the day such offers or sales commence in the case of unsolicited bids or purchases] or (B) such other time as those persons become participants in the distribution,◄ if none of such bids or purchases is for the purpose of creating actual, or apparent, active trading in or raising the price of such security [.] ►;◄ [In the case of securities offered pursuant to an effective registration statement under the Securities Act of 1933 the distribution shall not be deemed to commence for purposes of this clause (a)(3)(xi) of this section prior to the effective date of the registration statement.]

---

[65] Market purchases made pursuant to the Standby Offer to holders of Convertibles, other than stabilizing purchases, must be aggregated for the purpose of determining whether paragraphs (d)(A)–(G) of Rule 10b–8 apply to market purchases. Paragraphs (d)(A)–(G) of Rule 10b–8 impose conditions under which bids for or purchases of rights may be made and apply whenever the price of the underlying security is being stabilized or the underwriter has a long position in the underlying security. The restrictions contained in those paragraphs, however, apply only to market purchases of Convertibles.

[66] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rule-making, are set forth in Rule 0–10, 17 CFR 240.0–19. *See* Securities Exchange Act Release No. 34–18452 (January 28, 1982). An issuer is a "small business" or "small organization" under Rule 0–10 if the issuer, on the last business day of its most recent fiscal year, had total assets of $3,000,000 or less. A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d). *See* Rule 0–10(c).

►(xii) bids or purchases by an issuer or other person on whose behalf the distribution is being made, or by any affiliated purchaser [as defined in paragraph (c)(6) of this section] of such issuer or other person if such bids or purchases are made no later than 3 business days before the commencement of any offers or sales of the securities to be distributed, if none of such bids or purchases is for the purpose of creating actual, or apparent, active trading in or raising the price of such security;

(xiii) transactions in debt securities that are not convertible into another security, *provided, however,* that (A) either the issuer of such securities is subject to the regular reporting requirements of Section 13 or section 15(d) of the Act or the securities are registered pursuant to section 12(b) of the Act; (B) both the securities being distributed and the securities to be purchased are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (C) all of the outstanding public debt of the issuer amounts in the aggregate to at least $100 million in face amount.◄

* * * * *

(c) * * *

(3) * * *

(i) an underwriter, when he has distributed his participation, including all other securities of the same class acquired in connection with the distribution, and any stabilization arrangements and trading restrictions with respect to such distribution to which he is a party have been terminated; ►*provided, however,* that an underwriter will not be deemed to have completed his participation until any option obtained in connection with that distribution pursuant to which he may purchase from the issuer an additional amount of the securities has been exercised or cancelled◄

* * * * *

►(5) For purposes of this section only, the term "distribution" means an offering of securities, whether or not subject to registration under the Securities Act of 1933, which is distinguished from ordinary trading transactions by the magnitude of the offering or the presence of either special selling efforts and selling methods or the payment of compensation greater than that normally paid in connection with ordinary trading transactions; *provided, however,* that the sale of securities will not constitute a distribution for purposes of this section if the sale has been made in compliance with both the volume limitations and the manner of sale provisions contained in paragraphs (e) and (f) of Rule 144 under the Securities Act of 1933.

(6) The term "affiliated purchaser" means (i) A person acting in concert with the issuer or other person for the purpose of acquiring the issuer's securities, or (ii) An affiliate who, directly or indirectly, controls the issuer's or other person's purchases of such securities, whose purchases are controlled by the issuer or such other person or whose purchases are under common control with those of the issuer or such other person.◄

* * * * *

3. By amending § 240.10b–8 by revising (c)(2) and adding a new sentence at the end of the introductory text of paragraph (d) as follows:

§ 240.10b–8. Distributions through rights.

* * * * *

(c)(2) odd-lot transactions [(] and the [off-setting] round-lot transactions [hereinafter referred to)] ►associated therewith◄ by a person [registered as an odd-lot dealer in such security on a national securities exchange who off-sets such odd-lot transactions in such security by round-lot transactions as promptly as possible] ►who acts in a dealer capacity in effecting odd-lot transactions;◄

* * * * *

(d) * * * ►Any conditions imposed upon bids for or purchases of rights in paragraphs (d)(1)—(7) of this section shall also apply to bids for or purchases of convertible securities effected pursuant to a standby underwriting agreement with the issuer in connection with a call for redemption of such securities.◄

* * * * *

VI. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should submit six copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, not later than April 30, 1982. Reference should be made to File No. S7–921. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street N.W., Washington, D.C.

By the Commission.

Dated: March 3, 1982.

George A. Fitzsimmons,

Secretary.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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.

Last Listing March 12, 1982